United States Court of Appeals

for the Second Circuit

APPENDIX

74-1290

United States Court of Appeals

FOR THE SECOND CIRCUIT

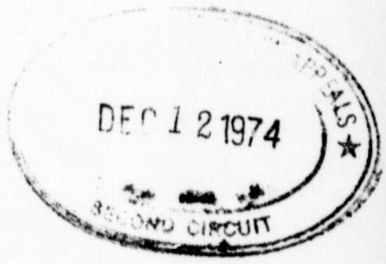
UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, an unincorporated association, and UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO, LOCAL 102, an unincorporated association,

Plaintiffs-Appellants,

vs.

LEE NATIONAL CORPORATION,

Defendant-Appellee.



APPENDIX

(Volume III—pages 818A to 1124A)

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UNITED RUBBER

V

LEE NATIONAL

New York, New York,
February 22, 1973 - 10 AM

(Trial resumed.)

MR. AUERBACH: We have a witness on.

M A U R I C E M. C L A I R M O N T, resumed.

THE COURT: As I remember, at the close Mr. Clairmont was looking for a provision in the contract. Did you find it?

THE WITNESS: Yes. I do not remember what was the last question.

MR. AUERBACH: I think I can tell the witness.

DIRECT EXAMINATION

BY MR. AUERBACH (Continued):

Q You had a paragraph in the letter to Mr. Hess, I believe it was, that accompanied the work rules that went into effect on July 18th,--both the letter and the notice were dated July 16th--and in the last paragraph of the letter, I believe, we saw that you gave yourself the right to make any other changes that you saw fit, and I asked you whether you had any contract that gave you that right.

A If you would look at that letter, it says that, with the exception of the eight changes that we proposed,

all the other provisions of the whole contract will remain in full force and effect, which means that the whole grievance procedure would also remain in full force and effect.

Consequently, every change we would have wanted to make would have been subject to such grievance procedure. It was not something that we could have done arbitrarily, because although we would have continued without the contract, we were willing to respect, with the exception of the eight changes, all the provisions of the former contract, including the grievance procedure.

It was no different than what we could have done before. There was no difference; even with a contract we could have made changes subject to any grievance procedures from time to time.

So I do not see where that makes any difference. Every company can make changes that it desires from time to time subject to such grievance proceedings that the union may bring against such employer.

Q Mr. Clairmont, I asked you if you could find for me any other contract which you have which had a clause or a paragraph similar to that one.

A Mr. Auerbach, we did not include that as part of the contract. We included the eight provisions -- we only called to their attention more or less like emphasizing something

that was known and understood; that we reserved the right so that the people won't think this is it, and now why do we come and make a new change. Changes are made all the time in plants, depending on business conditions and, as a matter of fact, you will see in every contract that the companies can make changes, other wise there will be no reason for a grievance proceeding. But they are limited to such changes in arbitration that the contract provides.

We only didn't want, knowing how touchy the relationships are -- I said, "Don't take that as the bible. We may have to make from time to time other changes with you subject to grievance procedures and arbitration, not something that we decide and dictate."

Q I understand that. I am simply asking you if you have in your experience in any of the plants that were under your jurisdiction or that you were associated with as part of the management any clause substantially similar to that one?

A Mr. Auerbach, we did not include that as a clause to be part of our contract. Otherwise --

THE COURT: I gather your answer to his question is "no."

A Otherwise, it would have been clause No. 10 -- that the company can make. It only called to their attention something that was obvious.

THE COURT: Don't argue with him. The answer to the ~~question~~ question is that particular clause is not in any contract.

THE WITNESS: It was not a clause in our contract. That is what I am trying to say.

THE COURT: He didn't ask you the reason. He asked you if it was in.

THE WITNESS: Mr. Auerbach seemed to infer it was a clause to be included in our contract. It was not.

THE COURT: I understand.

Q You were referring yesterday to the Cooper agreement?

A Yes.

Q Where did you say that plant was?

A The one furnished to me is Auburn, Indiana.

Q In point of fact, wasn't the Cooper plant in Auburn, Indiana, not a tire plant but an industrial plant?

A I don't know what it was. We tried to pick up from them United Rubber contracts.

THE COURT: Mr. Clairmont, neither side has been playing by the rules in this game so I am not criticizing you, but try just to answer the question, not give any explanation.

THE WITNESS: I have this contract.

THE COURT: He asked you, is it not a fact that plant was not a tire plant but an industrial plant. Your answer is "I don't know," period.

THE WITNESS: I don't know.

Q Did you hire somebody who had been with Cooper?

A Yes.

Q Was it he who gave you that contract that you have referred to?

A No. Mr. Conway, who was our personnel director, gathered from his colleagues in other plants all of their contracts, or as much as he could, but it covered pretty well the industry, and we just looked through all of them to

compare it with ours.

Q Did he give you one from the Cooper company in Finlay, Ohio?

A He may have.

Q But you don't have that with you?

A I don't have it with me. I am sure he did, because we had almost all the contracts that Cooper, Mohawk, all our competition, had, except the Big 4. Maybe we didn't try to study so much the Big 4.

Q Did Mr. Conway or anybody else tell you that the Cooper Tire & Rubber Company's plant was in Finlay, Ohio?

A I do not remember that.

Q And that they had a different contract?

A I don't remember that, but we had all the Cooper contracts.

THE COURT: "I don't remember that," period.

Q Did Mr. Conway tell you that the Cooper contract in Auburn, Indiana, was a first contract?

THE COURT: Was a what?

MR. AUERBACH: First contract; newly organized.

A No.

Q In your experience as a manager -- I don't mean a plant manager but company management -- are you aware of

the fact that first contracts are normally considerably easier on management than contract s which are built up over the years?

A I do not know that because in all the plants I have been associated with there were already existent contracts that I found. I have never had to negotiate with the union a first contract.

Q But in the course of your negotiations and studies did you have occasion to look back over the previous contracts to see the course of development of the contracts?

A As a rule any time that a contract expires it is a known fact the union tries to get some more advantages, higher pay, and so forth.

Q But I would appreciate your answering my question: In the course of your work did you have occasion, or did you, or did you have a study made under your instructions -

THE COURT: This is not in this case but in his history in general?

MR. AUERBACH: In his history.

Q As a general matter of information did you look at the course of dealings which would lead you back to the first contract?

A No, because I always found an existing contract

that was in force, so I didn't have any reason to see what has happened in Day One.

Q Have you ever heard as a general maxim or general experience that in labor relations the first contract with newly organized shops is generally the easiest contract?

A I wouldn't know about that.

THE COURT: He said, in effect, that it is customary for every renegotiation to --

THE WITNESS: We know that from the press. Every time the union comes they ask for more, if they can.

Q I would like to get back for a moment to Strong-Narovec.

By the way, in connection with your testimony yesterday, do you remember we were discussing December of 1962?

A Yes.

Q Were you aware of the fact, when you testified yesterday, that the contract provided for a shutdown for vacation for the period starting December 24, 1962, that this was paid vacation time? Were you aware of that, or had you forgotten?

A There is always vacation time paid.

THE COURT: His question is, were you aware that it came in the December month?

THE WITNESS: Yes, I did.

MR. MOSS: Which plant is he talking about, Youngstown or Conshohocken?

THE COURT: Conshohocken, I assume.

MR. AUERBACH: Yes.

THE COURT: You are now talking about the Strong-Narovec?

MR. AUERBACH: Yes.

Q Were you aware that Section 10.02 contained the following--

THE COURT: You don't have to read it. Was he aware that there was a two weeks paid vacation, and he said Yes.

MR. AUERBACH: No. There one week plus the holidays.

Q Now, if you would like to take a look at the Strong-Narovec report--

THE WITNESS: May I have your copy? Because mine is a bad one.

THE COURT: Is that 40?

MR. AUERBACH: ~~39~~ 40, your Honor.

Q I would like you to look at line 5, if you will-

A Line 5, yes.

THE COURT: Are you talking about the analysis at the end?

MR. AUERBACH: Yes, your Honor.

Q And line 5, in conjunction with line 1-A, and if we go from November through to March, we see on line 1-A that the production goes down each month.

At the same time, on line 5, the conversion cost goes up each month until March.

Then in April the company reversed its production and moved up and on line 5 the cost went down.

THE COURT: It doesn't seem to me to go down.

MR. AUERBACH: It went down from the previous month, your Honor.

THE COURT: Oh, from March. I'm sorry. I was looking at April.

MR. AUERBACH: Yes.

THE WITNESS: What is your question?

THE COURT: It seems to me to go up. .3868 to .3914 ~~13683914~~.

MR. AUERBACH: That's my point. As the production went down, the total amount or the total number of pounds of rubber produced went down.

THE COURT: Right.

MR. AUERBACH: And then in April they raised the production.

THE COURT: And then you said the conversion cost went down.

MR. AUERBACH: That's correct, from March to the month of April.

THE COURT: My copy says 39--Oh, I'm sorry.

MR. MOSS: 3194.

THE COURT: I just misread it.

MR. AUERBACH: The numbers are confusing because they are the same digits in different places. It took m e a long time yesterday to figure it out but I finally did.

You may recall Mr. Garber's testimony in this connection.

THE COURT: Yes, I do. It's just that I can't read. That's my trouble.

Q Who controlled the amount of pounds scheduled for production?

A The sales. If you have sales, you put more production.

Q I understand that. That's the economic factor.

I am talking about who was it, labor or management?

A Always management.

THE COURT: Well, management could produce more if it wanted to.

THE WITNESS: Except that, if I may, Mr. Auerbach, this is the kind of thing that has to be explained.

If you are going to show another example, take January. Will you please look at January? We made a million five hundred thousand pounds, right?

Q Yes.

A And in April we made a million three fifty seven; therefore less, right?

Q Yes.

A However, our cost of conversion in January,

making more pounds, was higher than in April, which shows you that there is no relationship between the cost of conversion and--

There is, however, a relationship between our costs because this cost of 33 or 38 or 35 contains an amount of fixed overhead, and as a rule there are exceptions, and the more you produce the less the cost of conversion is going to be, as a rule, but I'm sure you can see exceptions.

However, we are not addressing ourselves to the cost of conversion. We are addressing ourselves here to the output per man hour which has nothing to do with the amount.

The point to look at is 3-A, conversion, pounds per man hour. That shows productivity.

All of our debate with the union was about productivity, and you look, no matter how the rest fluctuated, this did not fluctuate because we wanted to know how much does a man produce in an hour, whether we have a tremendous overhead or a small overhead, not changing the output of work that a man can put in in an hour, and that was the whole question of our debate with the union, our productivity, to produce more per hour.

This is the only thing, and you will see that it was almost always the same without any relationship to the amount of production, so that we are displacing, I'm afraid,

the question of productivity tied up only with pounds per man hour, and you will see that there is no relationship between that and production.

Q ~~Didn't~~ Didn't you refer yesterday to the conversion cost?

A The conversion cost includes other things besides that.

Our cost was, out of the 36 or 35, there is 15 cents just labor cost, which have nothing to do with overhead. That's where we are doubling the cost. Instead of seven or eight cents, we have 15. That 15 stays constant irrespective of production, irrespective of the other overhead, and so forth. The content of what we paid to labor, whether you produce 100 tires or 1,000 tires, was constant.

Q Now, if you had production people doing mowing, and other non-production things, like mowing grass, and other non-production things, and being carried on the payroll, wouldn't that show a lower production per man hour?

A Yes, but if you will take five years, when they were not mowing grass--

THE COURT: Wait a minute. The answer is yes, period.

A Yes. If you will put the whole plant on mowing, the answer is yes.

Q Mr. Clairmont, I think you testified yesterday that you called a meeting with the union in the Fall of 1962; is that correct?

A Yes. The union wanted us, that I should participate at some of the meetings.

Q But in any event, you made, right after you became chairman of the board, a request of the union to make some changes in the welfare and pension agreement?

A Yes, I did.

Q Did you at that time ask the union if they would enter into a job evaluation, or a job re-evaluation, or a job time study program with you?

A No.

Q When did you first discover that the jobs were inefficient, or the incentives were bad?

A While I was interviewing it was hard to decide the day, or the month, but as I was talking to the various people who were trying to be hired, it became apparent that our costs were completely out of line with our competition's.

Q Well, I would like you to tell me, give me your closest approximation.

A Of course, when it became very apparent in a very precise way was when we got from Mr. Drexler exactly the cost of every operation plus the cost of the Cooper's

entire production. Mr. ~~Drexel~~ Drexler was the cost accountant that we hired from Cooper.

Then I could have looked at all of Cooper's records and seen every operation exactly to the point and to the penny.

THE COURT: When did that happen.

THE WITNESS: Well, it's hard to remember. It was within, I will say, probably between September when I became chairman and sometime maybe in January or February, or--I don't remember the date when I interviewed or Mr. ~~Drexel~~ Drexler brought me that sheet.

Besides, from the interviewing we had, from both people we tried to get, to head the sales department, and we interviewed quite a few, at least four or five, and maybe just as many to head the manufacturing division, I mean, all of them confirmed the same thing, that our costs are completely out of line, higher than their selling prices.

Q So you say that you became aware of this sometime between September and January?

A To the best of my recollection. I couldn't pinpoint the day but the early stages of my--it must be during the first five or six months of my chairmanship.

Q What I would like to ask you, Mr. Clairmont, is when did you first become aware that this was a serious

problem? Not the full dimensions of it, but when did you first become aware that the incentives, or piece-work were out of wack?

A I became aware of it in a general way when I saw the prices at which our competition is selling tires compared with our cost because that was easy to see, that the competition is selling at prices much lower than our costs.

THE COURT: He is trying to get the month.

THE WITNESS: I cannot tell that.

THE COURT: Was that after you were chairman?

THE WITNESS: Obviously, but the month I could not remember.

Q Well, did it take you long to discover the differential in prices?

A Probably a couple of months; until I got to that. You know, when you take over and have to become acquainted with the plant, the people, I don't know at what particular point or the exact time when I started to become aware in a general way, and then in a more precise way.

Q Would it be fair to say that sometime in the fall of 1962 you became aware that your incentives, your piecework rates were out of wack?

A I would not say that I became aware that the

piecework rates were out of wack but our general costs were out of wack.

Then we had to ~~fine~~ find out which part of the general costs were out of wack, overhead, or labor, or both. That requires, of course, a much more detailed analysis.

Q When was the first time that you said to the union, either to Mr. Hess, or Mr. Tarbutton, or Mr. Burdon, or anybody, "Hey fellows, you guys are costing us too much in the job rates, in the incentives. We need your help. Let's change it. Let's study this"?

A In a general way I knew that in a general way their cooperation would have to change and that changes will have to be made. I guess I mentioned it probably at some of the initial meetings with th em, but in a general way, without precise things. We need your cooperation in order to make ourselves more competitive.

Q But now when was the first time that you asked for help in the job evaluation program?

A I could not remember that after ten years, to remember the date, or the time when I said it.

Q I don't want the date; I don't want the time; I want the month.

A I couldn't rmmmber.

Q Do you have any records? You have records of

meetings, you have records of proposals.

A Maybe if I look at those, but it's not in my mind. I don't have it.

THE COURT: You examined these records. You must know what it is.

MR. AUERBACH: This is my point. I know what the answer is.

THE COURT: Well, then, show him the record and say: Isn't that the answer?

THE WITNESS: If I may look at the records--

THE COURT: If you know the answer, call his attention to it.

Q Isn't it a fact that until the proposals in May, 1963, May 29, 1963, wasn't that the first proposal that you made?

A Yes. At that time I was fully aware of all these things. In '63 I was--

THE COURT: The question he asked you was: Had you said before that proposal of '63, had you ever told the union that you needed time studies?

A Yes, I'm sure I did. I said already in April, I think, with the international union--

Q Do you have anything in writing, or any records that show that any time before May 29th you went to the

union and said "We need a new job evaluation program"?

THE COURT: Mr. Auerback, you have seen all the writings--

MR. AUERBACH: And there is nothing.

THE COURT: Then say that and get on with it. Don't have him sit there looking through those documents to find out whether there is anything in writing when everybody in the courtroom except the witness and I knows whether there is or not.

MR. AUERBACH: There isn't.

THE COURT: Then say that and get on to the next question.

Q Now, you mentioned yesterday something about the tread tuber rang a bell?

A The name of tread tuber I have heard before without knowing what it is.

Q Mr. Clairmont, did you know where the tread tuber was kept during all the period from--

A No.

Q Did you know that the tread tuber which had been purchased shortly before you became chairman remained unassembled in your warehouse all during the period that you were chairman?

A I cannot recall that. Things like this usually--

THE COURT: You cannot recall.

Q Now, did you discuss with your management people the inventory that you had?

A The inventory of tires?

Q The inventory of equipment.

A No.

Q Did you make any survey to see whether you could use any more efficient equipment?

A We knew we had everything we needed, at least for a great part of the plant, for the production we needed, of 5,000 tires a day. I had been told by everybody that we have all throughout all the departments the equipment we need to produce competitively, and that was to my satisfaction.

Q If I tell you that Mr. Hess and Mr. Tarbutton are here and are prepared to testify that the tread tuber was kept in the warehouse--

THE COURT: It doesn't make any difference what they are prepared to testify. He said No, he didn't know about it. Get on to the next question.

MR. AUERBACH: Well, I want to see if I can refresh the witness's recollection.

THE COURT: You have refreshed the witness's recollection. You told him it was a fact and he said he

didn't know. It doesn't make any difference what Tarbutton is going to testify to. How is that going to refresh his recollection?

Q Did you ever find out what the tread tuber was supposed to do?

A No.

Q Did you know that the tread tuber--

THE COURT: Let's get off the tread tuber. He doesn't know anything about the tread tuber.

MR. TAYLOR: Excuse me, your Honor. I have to interject. The witness specifically read from document number ~~1913~~ 99A quoting his man Barkett who he said he specifically brought from Mansfield Tire Company as an expert, who brought with him some trade secrets from Mansfield based upon --

THE COURT: He didn't say trade secrets.

MR. TAYLOR: Labor costs and production are trade secrets. There is no doubt about it. They were highly regarded secrets. Now Mr. Barkett, as an expert hired by Mr. Clairmont, came in and then Mr. Clairmont said he was relying on Mr. Barkett and his analysis of things.

Yesterday, Mr. Clairmont, on his own volition, read from this particular document, a little colloquy between Mr. Barkett and the union, and other people

concerning problems in the company. As Mr. Clairmont was saying, he was saying what the problems were, and one of the problems specifically, your Honor, if you look at that paragraph, is, the tread tuber problem--

THE COURT: He established that he doesn't remember. You can make this argument afterwards, but get off the tread tuber with this witness. Let's get on with the case. That is argument. That is for the court, not the witness.

Q You mentioned before that one of your problems in selling was a concern over the antitrust or that the government might stop one of the other companies from buying you out, is that correct?

A No, that's not correct. I didn't say it is my concern. It was the concern of those that might have been interested to look into the possibility of buying of the Big Four. In other words--

THE COURT: You have said it.

Q Mr. Clairmont, you have had a lot of experience--

THE COURT: What is the point of that? Is there any question in your mind that antitrust would be a problem?

MR. AUERBACH: Yes, there is, your Honor.

THE COURT: What possibly could there be in

your mind that Goodyear would not have a problem about buying a going tire concern?

MR. AUERBACH: It was de minimis, your Honor.

THE COURT: Next question. You come here and say that there is not a problem about Goodyear buying a competing tire company? Go somewhere else.

MR. AUERBACH: No, your Honor. I am not saying that they wouldn't have to look into it, but it would not be a major problem.

THE COURT: Then go on with the next question.

(Continued on next page.)

BY MR. AUERBACH:

Q There is just one question I would like to ask you before Mr. Taylor takes over.

I think you testified yesterday that you sold out your position in Lee, in the defendant, in, I think, 1968. Did you, as part of or even not as part of the sale enter into any agreement with regard to indemnification as a result of this lawsuit?

A I don't think so.

Q What?

A I don't think so. I don't remember, but I don't think that there's any indemnification or anything else.

Q Is there any kind of indemnification with regard to --

A No, it was a straight sale of shares.

THE COURT: Who did you sell it to?

THE WITNESS: To the other partners and to the other stock -- to the majority stockholders who controlled the majority. I was a minority stockholder. I sold it to them.

Q Is the group of people that you sold to the same people who have been partners or joint venturers with you in other acquisitions?

A No.

Q This is the only deal in which you entered into

with them?

A That I was associated with them, yes.

THE COURT: Do you remember your unit cost? I mean, your average cost per share?

THE WITNESS: It's very hard because there have been some I obtained options, sir, some I bought in the market. There was a stock split. I would not be able to say it now. I have to look up my records for that.

THE COURT: Did you ever analyze whether or not you could have liquidated the company at a profit?

THE WITNESS: Yes. The answer was no.

THE COURT: The answer was no?

THE WITNESS: No. I have never tried to liquidate any company because --

THE COURT: I did not ask about any other company. You could not have liquidated this company at a profit. Would the answer have been any different if you could exclude this union obligation? There is a $2 million obligation at issue in this suit, give or take.

MR.TAYLOR: Your Honor, forgive me. It may be more than 2 million.

THE COURT: Call it 5 million.

MR. TAYLOR: Whatever it may have been.

THE WITNESS: It was not 5 million according to our

figures. It was less than 2.

THE COURT: What?

THE WITNESS: According to our figures it was less than 2 million. A little under 2 million.

THE COURT: Take the 2 million. Did you ever analyze whether excluding that 2 million you could have liquidated the company?

THE WITNESS: We did not actually make a detailed analysis because we never thought of liquidation. That would have been the very last resort; I mean, if we could not have found any other solution we may have thought of liquidation. And then it is very hard to tell where the chips may fall, how much you are going to get for the building.

We got some estimates in the last stages of the strike, how much we could get for the building, for machinery, and they were such ridiculous prices that liquidation would have been, I mean, absolutely ~~disasterous~~ disastrous for us.

THE COURT: When did you first make this analysis?

THE WITNESS: I think towards the end, just before we -- either before we -- the board decided to discontinue or immediately thereafter, if my recollection is correct. We wanted to see if we can sell. We don't find anybody to buy it from us as a going plant without the union, then how much could we obtain?

We got some estimates, I think, from some local real estate people how much we could get for the building or something. They were such ridiculous prices that it was extremely discouraging.

THE COURT: You could not have gotten your investment back in that manner?

THE WITNESS: We did not even figure exactly how much we'd be able to get back and how much we wouldn't, but all the plant -- I think it was valued at $9 million. The most we could have obtained for it, in selling it just on a liquidation basis, would have been maybe $2 million.

BY MR. TAYLOR:

Q That was perhaps the original cost of the building from which there was a reserve for depreciation over many years?

A I do not remember. If you give me a balance sheet, I could remember.

Q But the plant itself was fairly old, the structure? Was it a fairly old building?

A Part of it was old and part of it was new.

Q I see. Partially with regard to the questions of the Court just now, Mr. Clairmont, we left off yesterday morning, or some time around there, with a couple of comments made. I was asking you some questions about your previous

experience, but it does tie in with the fact that you had taken some great pains to explain to the union your own background and experience in introducing yourself to the union as the new management in the summer of 1962; that is correct, isn't it?

A Yes.

Q And you have testified throughout yesterday that almost at all times from the very beginning you were met with a great deal of suspicion and mistrust and there may have been a credibility gap between yourself and your opponents or adversaries, meaning the union people; is that correct?

A Yes.

Q Now, it is true that the reason for --

MR. TAYLOR: I will rephrase that.

Q Is it true that the reason for the mistrust on the part of the union was your own background and experience and reputation which had already been in printed media? You had some publicity about your career; is that true?

MR. MOSS: I object to that question.

THE COURT: I do not see how the witness could know the answer to that. Your people have testified to that.

A I don't know what about the union except they told me they looked unfavorably upon me coming into the

matter.

Q Did you tell the union specifically, as you have stated already in court, about your experiences with Russell Industries, which is where we specifically left off yesterday, and then with Atlas Plywood, which was the next, I presume, experience prior to Lee Tire & Rubber Corporation?

A I offered to the union -- I said, "Whatever you may have heard about me that may influence you" -- because I could see an antagonistic attitude -- "I'm perfectly willing to sit with you any length of time and show step by step what has happened, how it happened and why it happened, and draw your own conclusions."

They never took advantage of that offer.

THE COURT: You mean you are referring now to the --

THE WITNESS: To all the things they said; that I may have liquidated, I may have done this. "I am perfectly willing to sit with you. Take all the records, public records, and the annual statements and show what has happened year after year under my stewardships in these companies, and make your own conclusions after that, not by hearsay."

They never pursued that, which I think it would have been constructive if they would have.

Q Were you aware at the time that part of your

career at Atlas Plywood had been ~~reporduced~~ reproduced in a book by T. A. Wise, the editors of Fortune Magazine, called "The Insiders"?

A Yes.

Q And it had been published and the masses had come across this kind of information?

A Yes, it was a collection of articles of Mr. Wise from different magazines and he published them.

Q Were you also aware in 1958 that you and your career, to some extent with your associates, had been written up and was the subject of a major article in Fortune Magazine?

A Yes.

THE COURT: By the same author?

A Not my career. I have to take exception. It was really an article which dwelled about the credibility of an auditor's certification.

I was coming, incidentally, into it like many other parties that had to do with the former management and myself. A lot of people were mentioned there, but the subject of the article was sort of an article about me, not my career or my business dealings, but how credible are the certificates of a known certified public accountant.

THE COURT: Is this relevant?

MR. TAYLOR: Very much relevant.

THE COURT: How?

MR. TAYLOR: The entire theory of the plaintiffs' case obviously is that because of the financial structure of the company, because of the --

THE COURT: How can an article in Fortune have any bearing on this?

MR. TAYLOR: Well, the article is very specific about Mr. Clairmont's particular talents and experience with regard to his ~~roll~~ role as to what happened in this case.

THE COURT: Why is it relevant in this case what someone wrote in Fortune?

MR. TAYLOR: (a) it would show a pattern, his experience --

THE COURT: That is not my question. Why is it relevant to what happened in this case what somebody wrote in Fortune, not the facts that happened, but what somebody wrote in Fortune? What has that to do with it?

MR. TAYLOR: You are correct, your Honor, but only insofar as a meaningful dialogue with the witness concerning his experience and what did happen and what he told the union in this case.

THE COURT: All right. Get on to that. What is the difference what Fortune said about it?

MR. TAYLOR: No, your Honor, that is the only compendium in print.

THE COURT: Ask him if these things are true.

THE WITNESS: It was only what Fortune -- what Mr. Wise said. And I want -- I'll be perfectly happy to show how many incorrect things, which can be shown by public records, have been mentioned in that article.

Q Let us talk for a moment, then -- because it is very pertinent to this case, too -- you are talking about the auditor's certified statements with regard to what happened in Atlas Industries, Atlas Plywood. And the auditors in that case -- I do not want to go too far afield -- but the auditors were Peat, Marwick & Mitchell?

A That's right.

Q Is it true, without having assigned any reason for that, you had replaced the auditors with Arthur Anderson & Company?

A That's right.

MR. MOSS: I object to all this on the grounds of relevancy.

THE COURT: What happened is relevant. He can show that this witness has done something evil in the past; that is relevant to this. What Fortune said about it is wholly irrelevant.

Q It is a coincidence, I will make note of, that Peat, Marwick & Mitchell were the auditors for Lee Rubber & Tire?

A That's right. We found them there.

Q But they were not replaced in this instance under your management?

A No.

Q Whereas, prior to this you had used Arthur Anderson replacing who was there?

A We never accused -- I have to explain that, if you allow me. I can't answer yes or no. We never accused Arthur Anderson -- Fortune started to make a big deal out of that -- but we never accused Arthur Anderson of any dishonest kind of thing -- just a minute.

Q I would like to interrupt you. I think you are citing the wrong firm. I believe you were accusing Peat, Marwick & Mitchell.

A Yes, Peat, Marwick & Mitchell. We accused them -- we didn't even accuse them. We found -- having been auditors for about 20 years for Atlas Plywood, and Atlas Plywood having about 40 different locations, both warehouses and plants, they paid them $15,000 a year. So they did have a perfunctory kind of examination which, on the face of it, the books were not joggled around, but they didn't go and

take inventories on this locations, except local management's figures, which were consolidated at the headquarters.

If they had gone and made a real test, as they would have, they would have had to be paid at least $100,000 for such an audit. They paid them about -- either 12 or 15. An auditor, like a lawyer, like anybody, has only time to sell. So they accepted management's figures, consolidated them. The books were all right. And then they took Arthur Anderson and paid $150,000 for an audit because they sent people to all the various locations and found that inventories that were supposed to be there were not there. They found that accounts that had been bankrupt already were kept on the books like good accounts because the local managers of this plants and of this warehouses didn't want to show poor performance.

So that we didn't -- we never had accused Peat, Marwick & Mitchell of any misdealings, we only could have criticized them for having accepted management's figures. But they couldn't do more because they weren't paid for that.

Q Isn't it true that you threatened to bring a lawsuit against Peat, Marwick & Mitchell?

A No, that's what Mr. Wise says. We only threatened Peat, Marwick & Mitchell to force them to produce their working papers to Arthur Anderson that took over. But not

to sue them for any misdealings or for any dishonest acts.

THE COURT: What is the relevance of that?

MR. TAYLOR: One final question and I will show the relevance immediately, your Honor.

Q Isn't it a fact that you addressed a letter to the manager of Peat, Marwick & Mitchell, or the partner of Peat, Marwick & Mitchell in charge of the Boston office, which is where the offices of Atlas are, and a copy to Mr. Black, who is the senior partner, still is, I believe, of Peat, Marwick & Mitchell, threatening them with a lawsuit, in response to which they secreted, which is the first time in their history, all of their working papers and refused to turn them over to you in preparation for this lawsuit?

A It is absolutely correct.

Q All right.

A We asked them only to give the papers. When they refused to give the papers, we threatened them that we will force them, by lawsuit or otherwise, to deliver the working papers to Anderson so that Anderson can continue the work from this working papers.

Q Did you ultimately settle or make peace with Peat, Marwick & Mitchell?

A Yes.

Q And Peat, Marwick & Mitchell was the same auditors

when

when you came on the scene for Lee?

A No.

Q You did not replace them here?

A No, we didn't have any reason.

Q Atlas Plywood, they had shown profits under the aegis of Peat, Marwick & Mitchell, they had been shown profits when you took over as chairman of that company; is that correct?

A Atlas Plywood was showing in the last year before I came in, I think, a profit of $400,000 or something.

THE COURT: $400,000?

THE WITNESS: $400,000.

A And the next year a loss of $10 million.

Q And the loss of $10 million was a sudden fairly dramatic change about in Atlas Plywood's fortunes because you with Arthur Andersen conducted a severe writedown of assets and inventory?

A Not me. Arthur Andersen did it, not me, because they went to every location and found. for instance, in one location there was supposed to be, let's say, $800,000 worth of logs. They found $300,000. They asked where is the rest? The answer was, "maybe they fell at the bottom of the lake."

In other words, the local managers, in order to deceive the central management about the losses they were making always dressed up in a way, presented facts that were not correct. In Boston all they did was to take the faulty reports and consolidate them.

Q Wasn't it a fact this sudden turnaround in he fortunes of Atlas Plywood from a history of profits, including $400,000 in the year you took over to a $10 million loss was rather dramatic?

A When I became chairman and active there it was in the month of April, and Atlas Plywood's fiscal year ended

in June, so it was two months, so I couldnt create such a loss in two months.

THE COURT: You are trying to establish the difference between profits and losses was an accounting difference; is that what you are trying to establish?

MR. TAYLOR: No. Not if I understand your Honor's question. We had a similar situation at Lee which I am about to refer to.

THE COURT: Let me get the point on Atlas to start with. Atlas Company, as I gather from what the witness has been saying --

MR. TAYLOR: Atlas Plywood.

THE COURT: -- was showing a $400,000 profit one year, and the next year it showed a $10 million loss.

MR. TAYLOR: After Mr. Clairmont and associates took over.

THE WITNESS: We took over at the end of the fiscal year.

MR. TAYLOR: They showed a $10 million loss, your Honor. It caused quite a storm in the public markets or financial markets.

THE COURT: And the explanation was Arthur Andersen went in and found that the $400,000profit --

THE WITNESS: It was all certified by Arthur

Andersen.

THE COURT: -- found the $400,000 profit was a loss?

MR. TAYLOR: Not quite. The $400,000 stood. The following year they had a $10 million loss with write-downs.

THE COURT: But if they continued the same accounting practice they wouldn't have shown the $10 million loss; is that right?

MR. TAYLOR: Yes.

THE WITNESS: They would have, because all you had to read is the annual report before I became chairman when I was not even in Atlas, because just about a year or two before I became chairman the former chairman died and a new man was appointed chairman. You have to read the report that that chairman or chief executive made to his stockholders about the situation at Atlas then when I wasn't even connected to see all the details he is explaining and showing there to see the situation in which Atlas was. Because besides this writeoff there was a million and ahalf in operation loss.

When things go bad -- you see a company like Boise Cascade, they made a profit one year and writeoff $130 million. National Cash Register, $55 million in one

year after they show a profit. I am talking the most respectable companies.

THE COURT: I am just trying to find out what your point is. What is your point?

MR. TAYLOR: If I can, I will try to tie up that now.

Q You were connected, weren't you, at Atlas Plywood when the change of the death of one chairman and an interim chairman took over prior to your control?

A Mr. Mallow before me took over.

Q The idea of writeoffs of obsolete inventory is a managment decision, isn't it?

A Missing inventory is not obsolete inventory. Missing inventory is nobody's prerogative. If it isn't there it isn't there.

Q Do auditors work for management?

A No, they work independently of management.

Q And they make decisions concerning writedowns of what is obsolete and what isn't, and what is moving, and the value of contracts.

THE COURT: He is not talking about obsolete? He is talking about things not there.

THE WITNESS: There are two ways of producing losses. One is losses which are there from operation. If

the inventory is not there, you just show what you found. That's arithmetical.

Q What is profits and losses from operation.

A You can see what was there spelled out in detail. In addition to which there are losses from inventory that might have been kept there like I gave you an example in Lee. We had supplies for machinery that didn't even exist there any more, which has been thrown out of the plant a long time ago, but supplies for that machinery was still in store and kept maybe for $50,000 in inventory. All you have to do is throw them out because they are no good to anybody any more and they don't have a market value.

So let's say you find obsolete inventory which hasn't moved in three years, and you still keep the original price. Always you have to write them down. This is the decisions that are not made onlyby management, they have to be supported by facts.

Q Quite correct. But it is a management decision, is it not, ultimately?

A It is a management decision. It is not one management. It is a standard parctice in the business that an inventory that is three years old and didn't move has to be written down. It is not something that one management decides and the other doesn't.

THE COURT: What is your point? Do you want to tell me your point without advising the witness? That's perfectly all right, if you want.

MR. TAYLOR: No, your Honor. It's part of he scene here.

Q At Lee Rubber & Tire you acquired Peat, Marwick & Mitchell as auditors shortly after you had a fight with them at Atlas Plywood?

A I didn't have a fight with them.

Q A dispute concerning writedown.

A The only dispute was concerning working papers. That was the only dispute with them.

Q When you took over at Lee, and you have already testified they were showing profits, no matter how they were arrived at the financial statements were showing profits; is that correct?

A No, they were not showing profits.

Q Were they showing losses?

A Yes.

Q Their financial statements, both financial and quarterly interim statements, those showed losses?

A You will see that if you analyze the prior years --

Q Forgive me. I hate to interrupt you. I asked you

specifically --

A For what period?

Q For any period was it a profit or loss?

THE COURT: Give him a period. You know. You've got these documents. For God' s sake, show them to him. I am tired of having the case prepared as you go along. You know the answer to the question if you have prepared your case. Show him the document and ask what it means.

THE WITNESS: May I have the document that we show the profits and losses of Lee for the last three or four years, and the proxy statement, and the adjustments?

THE COURT: What do you do at home?

MR. TAYLOR: Pardon me?

THE COURT: Have you prepared this case at all?

MR. TAYLOR: Your Honor, I think it is a slightly unfair criticism.

THE COURT: It is not an unfair criticism. You have been studying these documents. If you want to show him there were profits or losses, show him, but don't ask his recollection.

MR. TAYLOR: The defendant has not come forward with any of its own financial statements at all. It has no records.

THE COURT: You are talking about published

statements.

MR. TAYLOR: Forgive me, may I inform ~~yours~~ your Honor? We went to a great deal of trouble in this regard. For the periods in question here the exchanges, ~~be~~ the stock exchanges, do not hold much material left.

THE COURT: Your clients were stockholders.

MR. TAYLOR: We have acquired --

THE COURT: Whatever you have acquired you have gotten.

MR. TAYLOR: We have acquired different statements.

THE COURT: I don't care what you have acquired. You asked the witness a question. Show him what you are getting at, and get on to the next question.

THE WITNESS: I have here all the profits for Lee published in our statement notice of special meeting filed with the SEC of the Rubber Division of Lee and of the Republic separate. When we want to sell Republic we have to give our stockholders figures in order to prove the profits and losses, and here they are of both divisions.

MR. MOSS: This is Exhibit 62-A., page 11.

THE COURT: Page 9, I would think.

MR. MOSS: I think it is page 11, which separates out of Republic profit the Conshohocken profit. Isn't that so, Mr. Clairmont?

THE WITNESS: Yes. It is page 11 in which they divide the profits between the two divisions showing the profits and losses for each division.

Q Referring to page 11 --

A Now it shows that in 1960 Lee Division made $121,000 profit, and then if you look at Note B underneath it shows that was after crediting a $267,000 non-recurrent profit, which if you take that off it would show a loss of about $140,000.

Now, let's go to see what that note says, what was it about?

Q Mr. Clairmont, I would like to interrupt.

A In other words --

THE COURT: Let him ask a question.

Q I thought we wouldn't go into - since you testified we wouldn't go into the special writeoffs or the reasons why a profit would be shown. I was only asking you: were profits shown?

THE COURT: Don't ask him. Here it is, $121,000, Lee Division, was shown.

THE WITNESS: With an explanation of how it was shown.

Q On page 9, Mr. ~~Clairmont~~ Clairmont, you have a compendium of overall earnings of the whole company, which is what we

we are talking about, the whole company.

A No, we are talking about the Rubber Division. Are you talking about the whole company or the Rubber Division?

Q We are talking about the company. It is a whole company with different divisions.

A All right.

Q In 1958, 1959, 1960, there were profits reported. It may have been declining. And into 1961. Yes or no?

THE COURT: Don't ask him. It is there in the record.

Q So that the first loss shown was in 1962, which was the annual statement for 1962 that showed losses; is that correct?

A Right.

Q To come back to what we were discussing, when you took over the company you became a director in June, I believe you said, and you became chairman of the board some time maybe in September. Now, Lee had an October 31st fiscal year; is that correct?

A Yes.

Q October 31st is the fiscal year for the company?

A Yes.

Q Now, you undertook a series of writeoffs on the 1962 annual report --

A They were net writeoffs.

Q Well, there was a 9-month or 11-month profit shown on interim statements prior to the annual report, or prior to the twelfth month of that year; was there not?

A I don't remember.

Q All right. Do you recall that the company had ~~sowhn~~ shown profits on interim statements at least for nine months ending in October 31, 1962, but that the company --

A I can't recall that unless I see the figures.

THE COURT: Do you have them?

MR. TAYLOR: Yes, your Honor; document 109-A is the interim report. It is a 6-month report --

THE COURT: The interim report shows a net loss of $214,429, as I see it.

MR. TAYLOR: That is six months ended October 31, 1962 -- the comparison of 1962. This year shows a profit of $297,245.

MR. MOSS: That is estimated net earnings. It deosn't say it is a pnfit.

THE COURT: That's correct.

Q Is it a fact, Mr. Clairmont, that after you became chairman the annual report for Lee, the defendant, showed a loss approximating $900,000-odd?

A Yes, I see $840,000 here.

THE COURT: Where is that?

MR. TAYLOR: The annual report of the company for October 31, 1962, which is designated 54-A.

THE COURT: On what page?

MR. TAYLOR: That would be page 8, your Honor, current earnings. It shows in 1962 a loss of $1,275,000. But I believe there was a tax credit against it which reduced the loss either in this report or ultimately to $900,000-odd.

On page 3 on Mr. Clairmont's report to stockholders, the very first paragraph, he states that:

"As can be seen from the attached financial statements, our losses for the fiscal year ended October 31, 1962, amounted to $1,447,797, including special charges aggregating $172,000. After appropriate tax credit, the net loss for the year amounted to $840,297."

THE COURT: Okay.

Q The reason for this loss was primarily the writedowns which were undertaken at the instigation of management when you first viewed the scene and sized up the company as to what was going on?

A Not so. Why don't you read the whole report where it says the losses can be traced primarily to the following? Whydon't you read the whole explanation of how

the losses came about?

Q We will go into that. I am referring to the similarity between the Atlas situation and the Lee situation concerning writedowns. You found -- the auditors, in this case Peat, Marwick, Mitchell -- you found obsolete inventory, improperly evaluated assets, but whatever happened you did announce writedowns which created the losses, fairly substantial, for the year 1962?

A You are making statements which are incorrect. Read the seven items which contributed to these losses. Don't talk about writeoffs; talk about all the seven points.

Q This was your first annual report to the stockholders of this company; is that true?

A That's right.

Q In this statement, don't you give your analysis of the shape of the company, the condition in which you found the company at this time? Isn't that correct?

A That's right.

Q The seven points here you are delineating the reasons, really, for what you consider the losses; the reasons attributed to the losses, okay?

A Yes.

Q Now, since it is very pertinent, if you would

like to you may review them for us.

A I know thmm.

Q Well --

THE COURT: No. 5 is writedowns. One --

THE WITNESS: One of them is writedowns.

Q Of certain obsolte inventory, right?

A Yes.

Q And No. 6 is a substantially higher charge off this year for uncollectible receivables; and No. 7 is in connection with plans to eliminate certain undesirable and unprofitable products and activities. Provisions were made for carrying charges and other expenses and losses arising from theimplementation of this program.

I would assume it was a reserve account, your Honor.

THE COURT: Ask him.

Q Was this a reserve account?

A It was not a reserve account. Actually, we did all of this and took losses more than we reserved for when we closed some of the warehouses that were unprofitable and that was because we had to carry long term leases, we had to give severance to certain people we had to let go.

In other words, this is very usual. Everybody makes the provision when they know for sure. We didn't do it

because maybe we will do it; we actually did it.

Q You are talking about taking a current expense for the implementation of a future program in No. 7?

A No, something that was already in the process of being done.

Q But it still was --

A We were closing already certain warehouses.

Q But it was in the nature of a reserve account, like a depreciation acocunt, which is a bookkeeping entry, an accounting procedure?

A This isnot --

MR. MOSS: Wouldn't it be possible for Mr. Taylor to ask Mr. Clairmont what he wants to know instead of arguing with him and telling him what the things are? Mr. Clairmont is perfectly prepared to testify.

A It is all there. $300,000 out of that was only due to the new funding provision that we had which didn't exist before which the company did not make provisions in its first six months report when theyestimated the earnings. They didn't make any provision for this funding which we knew we have to pay, and did pay.

Q Previous management didn't make provision for the funding because, isn't it a fact, the company wasn't obligated to start funding until July 1, 1962?

A Mr. Taylor, canyou ask me questions which I can answer?

Q I thought I had.

A No. What was the question?

Q You just said that the item No. 3 --

A Why this was necessary? How this loss came about? Would you like me to explain it, or ask me a question precisely which I can answer?

THE COURT: The question he asked you was, you referred to paragraph 3, and said that the company's previous management hadn't made a provision for that funding, and he was asking you whether that wasn't proper, in effect, becuase there was no obligation to fund before this year.

THE WITNESS: Yes. By that time the obligation existed to fund, and we did pay this amount.

THE COURT: So that's why you had to put this in there?

THE WITNESS: Exactly. It is a big chunk, $300,000. If the company would have made provision for the first six months instead of showing $240,000 estimated earnings theywould be showing a loss, just taking this.

Q The obligation, pursuant to the agreement in question here, didn't become effective until July 1, 1962,

though?

A Mr. Taylor, we took a big writedown on inventory. The way that happened I did not take it. Through the existing employees of the company which I found there I told them to take and put prices on each item at values at which they can be sold. I didn't influence it. I didn't know what prices they were selling. The former employees of the company, the sales people I found there, they put every tire whether it is a year old, two or five years old -- put it at a price it can be sold, and they appraised the inventory because there were tires five years old in inventory that couldn't be sold, there was no market, they were four ply tires, but they kept them in the inventory. The management was sensitive and tried to use accounting practices to keep the inventory at cost or market, whichever was lower, and they kept it at cost and never found out at what price they could sell. They kept them another year. We wanted to get rid of the inventory.

We found supplies staying there occupying space and couldn't be used for anything. We threw them out. We did what every sound management does that takes over a company in which things have been masked to present the best picture.

Q Did you discuss these writedowns with your board

of directors?

A This is something that --

THE COURT: Yes or no? Did you?

A No.

Q Is this severe writedown and change in either the auditing procedures, or a writedown of the assets of the company, an important business item for which the board of directors is responsible?

A Not when you have 24 million assets and you write down two or three hundred thousand. If you have to write down five million out of twenty-four, but not if you write two or three hundred thousand you don't take it up with the board of directors.

Q Item 3 by itself is $210,000 alone.

A That was not a writeoff.

THE COURT: There is certainly no question about discussing with the board of directors an obligation that matures.

THE WITNESS: Writeoff is only when you reduce the price of inventories. That is called writeoffs.

Q Let's pin it down a little bit. Would you please then tell me, since I believe we have statements here that there were one and a quarter million dollars of writeoffs or an unusual expense of some sort -- will you please break

it down for us?

A Where do you see that?

Q In the first paragraph you said yourself the total losses for the year amounted to $1,447,000 -- let's call it one and a half million dollars for the sake of argument. After various tax credits and the like, the loss for the year came out to $840,297?

A Yes.

Q On page 8, we have already referred to the fact the loss from operations before provision for taxes was $1,275,000, so the figures seem to jibe because the bottom line there is $840,000.

A Where does it say the 1.4 million is resulting from writeoffs?

Q In the June 1962 6-month report there was a $300,000 net estimated earnings.

A That was done before me.

Q Will you please tell us what occasioned the differential between the $300,000 six-month gain or earnings estimated to a net of $1,275,000 worth of losses at the end of twelve months?

A If you want me to tell you it is not broken down here; I will have to go to the working papers of the company to see how much is attributed to each of the seven

items. But the writedowns did not account for the 1.4 million that you are referring to.

Q Specify then what were the writedowns so we will know.

A In the first place, from the $1,447,000, if you take off $310,000 that was the funding obligation you right away bring it down to about 1.1 million, right?

Q Okay.

A Now, this 1.1 million consists of six different things that made it up which are mentioned in these points. Part of it may have been writddown. Maybe it was two hundred, maybe five hundred; I don't know how much it was now. The other was discontinuance of certain warehouses for which we had to make reserve. The other may have been the supplies. If I remember precisely there was a tremendous amount of supplies, over $100,000, that were absolutely unuseable because we dfln't have the machines any more in the plant for which the supplies had been accumulated for years becuase theyhad been replaced by newer machinery of a completely different type. That I remember was an item over $100,000.

The other a good part of it was due to -- if you look in that report we had inventories of $8,400,000. If you take only 10 per cent reduction of this it would have been

$800,000, and we had a tremendous amount of inventory completely out of line with sales. We had sales of $30 million and inventory of $8 million, which is completely out of line, because they couldn't sell and they accumulated mountains of tires which have been there for years.

On an inventory of $8 million if you take only 5 per cent on an overall basis, some of them may have been good tires, it is already $400,000.

Q So there were substantial writeoffs as part of this loss?

A Yes. You also can see that there were uncollectible --

THE COURT: Now you've got substantial writeoffs.

THE WITNESS: On an inventory of $8.5 million even at 5 per cent adjustment in price -- and we had high cost tires, and many of them obsolete tires that couldn't be sold any more, that weren't even worth fifty cents on the dollar -- a management that wants to show profits to sustain itself would usually try to ignore that and not take it. We wanted to sell the tires and put them at prices at which we can sell them. We didn't want to carry $9 million of inventory year after year after year. There comes a time when even something bad you sell for the best you can and make money out of it.

THE COURT: The Court will take judicial notice that some of the things that he is describing is management decision.

THE WITNESS: Right.

THE COURT: Let's go on.

Q And is a management decision ordinarily a matter for the board of directors of a corporation?

A If it is of very important magnitude. If it is something that can very vitally affect the existence of the company it is probably submitted to the board. If it is something that comes in the ordinary course of business, it is not.

Q Did you submit this decision to charge off against earnings whatever it was that occurred in this year -- did you submit that information to the board of directors?

A Never the management --

THE CHURT: Never say"Never." Did you this time?

A No, I did not.

Q Were you subsequently accused by a fellow director named Herman Kahn of having ruled with some form of dictatorship and precluded fellow directors having knowledge and information concerning your actions with regard to these things?

A I don't remember what Mr. Kahn had accused me of, but he accused me a lot of things because Mr. Kahn was the very man trying to obtain control of the company which Mr. Garthwaite didn't want, and that's why he invited me to buy, because Mr. Kahn was a professional liquidator. Let me add this: His business was to sell old machinery.

Q Did Mr. Kahn bring a lawsuit against youand Lee National, or Lee Rubber & Tire at the time, to enforce his rights as a director to inspect the books and records of the company to find out what you were doing with regard to these writeoffs in the earnings statements?

A Yes, he did, but I remember he never continued with it.

Q Did he ultimately ~~ultimately~~ receive a court order from the Supreme Court of the State of New York, New York County, enforcing his rights of inspection and discovery?

A I don't remember, but if he did he never used it.

Q Your statement, to the best of your memory, I understand, is that Mr. Kahn never tried to make good on his inspection?

A No.

Q You don't remember him having arguments with you concerning who he may have with him in the way of assistants, and what time during the day he may make such inspection?

THE COURT: What is the relevance of this? It is a fight between him and Mr. Kahn.

MR. TAYLOR: Concerning management and the fortunes of this company which we are very much concerned with. I think this is relevant.

THE COURT: I don't see why a fight with a fellow director is relevant.

MR. TAYLOR: As to what "management" was doing with regard to the future and existence and earnings statements of this company, its viability, is very relevant.

THE COURT: That he had a fight with ~~Kah~~ Kahn?

MR. TAYLOR: We are obviously referring to litigation they were involved in.

THE COURT: Doyou want to show ~~me~~ me the complaint and say that it proves something?

MR. TAYLOR: We can, and we may, but for the moment I only want to get from the witness the statement of facts so we can get beyond this point which is pertinent to these writeoffs.

THE COURT: How is it pertinent to writeoffs that he had a fight with Mr. Kahn?

MR. TAYLOR: Because Mr. Kahn felt he as a director had a right --

THE COURT: Should I care what Mr. Kahn felt?

MR. TAYLOR: Mr. Clairmont did not let him have that information.

THE COURT: And he said why. We can't try it here.

MR. TAYLOR: I just want to refresh the witness' recollection because Mr. Clairmont said he didn't exercise his rights.

Q Didn't Mr. Kahn go back and get a further court order allowing him to get his attorney and accountant to accompany him? ~~the company?~~

A I don't remember that, but I know in the last resort he never did exercise it.

MR. MOSS: I object. The only question is when did the company permanently cease operations at Conshohocken. Whether he did or did not consult with the board of directors has nothing to do with the case at all.

THE COURT: I will allow the question as long as I can see t he relevance, but I don't see what the fight with Mr. Kahn has to do with it.

MR. TAYLOR: I submit then in answer to Mr. Moss' statements that the entire conduct of the affairs of this company and the ultimate sale and disposition of the Republic Rubber Division and the ultimate sale and disposition of the Conshohocken Division was part of an overall plan,

and we of course are bringing out the fact that this is the managmment; Mr. Clairmont is management.

THE COURT: I understand that is your theory. I don't see what a fight with Mr. Kahn has to do with it.

MR. TAYLOR: Only in so far as it shows how Mr. Clairmont was runni:ng the compahy.

THE WITNESS: May I answer, ~~because~~ because you mention how I was running the company. Here's the Republic Division that in 1961, before I was there, losing $46,000, and in 1962 losing $184,000, and under our management making for nine months $130,000, so here's how I come out after two years of losses making money where we could make money. So If I wanted to produce losses I wouldn't make money after two years of losses in Republic.

Here it is. They lost money before I was there, and I make money after I am there. I should have continued to show bigger losses, according to you.

THE COURT: Just try to answer questions.

MR. TAYLOR: The witness was just referring to page 11, your Honor, of Document 62-A, the proxy statement of November 25, 1963. I believe he was making some statement with regard to earnings which he attributes to his leadership of the company for Republic Rubber Division.

THE WITNESS: Yes.

Q In what year, 1962?

A 1963. For nine months we made $113,000. After ~~I don't~~ they made losses for two years before.

Q As a matter of fact, not they, the whole company, you are saying in this statement; right?

THE COURT: No. Rubber Division made losses in 1961 and 1962, and a profit in nine months of 1963.

A We were trying to make profits, not to show losses.

Q Mr. Clairmont, the same statement in the 1962 annual report, Document 54-A, for purposes of clarification -- and specifically, I believe, page 4 -- you gave the stockholders your view of what management intended to do to turn around the company's situation?

THE COURT: What page is this?

MR. TAYLOR: Page 4, your Honor, though it goes throughout the entire letter to stockholders.

THE COURT: Page 4 of 63-A?

MR. TAYLOR: No, 54-A. That is the 1962 annual report that we have been referring to.

Q I specifically direct your attention to the third paragraph down:

"A comprehensive review of all aspects of the company's business and a thorough examination of present

methods of operation has recently been ~~commenced~~ commenced and is currently continuing, but it will take a few months before this examination is completed, and, therefore, it is now premature to discuss the results of this survey. In the meantime, however, certain measures have been taken in order to immediately correct certain obvious weaknesses and shortcomings, namely" --

And then you itemize five points, and then you have a summary paragraph after that.

Now, Mr. Clairmont, yesterday you gave at some length testimony concerning what you considered to be the problems of the company and while sales and marketing and overhead were problems you specifically stated that the cost of labor was the paramount problem with the company, and I believe you stated that it was a chicken or the egg proposition, and as between sales and cost or production or cost of labor you felt that the attack had to be on cost of ~~a~~labor, which you felt was too high in order to sell at competitive prices.

This was the substance of your testimony, right?

A Yes.

Q With regard to your testimony that it was the cost of production and the cost of labor as being the paramount problem of the company, I would like you to review

your statements to the stockholders in this report on page 4 right in front of you and tell us, if you will, how this jibes with, or agreed with, your statements yesterday that the paramount problem of the company was the cost of production and the cost of labor.

A We tell them here in the meantime certain measures have been taken. We tell them what we could take, what was within our power to do -- one, two, three, four, five. We couldn't tell them about labor, because it is something we couldn't do without labor. It takes two to make love. What shall we tell them, we are going tocut our cost of production? That didn't depend on us; that depended on negotiation with labor when the contract will go to expiration.

We just told them the measures we could. We told them we cut every salary, including mine. We cut Mr. Garthwaite's salary. He took less than before. Anything within our power we told them here's what we started to do. But we couldn't tell them we cut our cost of production because we had a union plant. Otherwise, we could have told them we are going to cut the cost of production. But we couldn't tell them that.

Q I direct your attention to the first paragraph on the right hand side of page 4, following the fifth pointof

your analysis, beginning that "It will take quite some time to accomplish the vast reorganization program ahead."

I believe the next sentence says: "Our company must be prepared to alter many of its former fundamental concepts and new approaches to marketing and distribution of certain Lee products may have to be adopted in addition to the existing ones."

And you say the year 1963 is going to be one of transition.

What did you mean by "changing the fundamental concepts" and "new approaches to marketing and distribution of certain new products"?

A By this I mean we have to go and sell to the typical clients the manufacturing company is selling. In other words, go away from the warehouse distribution system, try to replace the Phillips account by similar accounts. All of which, of course, meant to have first the proper price at which we can obtain such customers.

In other words, we had to replace completely the outlets we have by the typical outlets that manufacturing people have. People that buy 8000 tires at one clip 15,000 tires for a continuous supply to a big customer. Which are the typical clients t hat evey tire manufacturing company has. Lee was the only one that didn't have this type of

outlet.

THE COURT: To get back to an earlier question, I notice here the only reference to labor is the last paragraph on page 4, which tells about having succeeded in coming to a satisfactory arrangement about the funding.

THE WITNESS: Yes, because that was the negotiations that have been by that time concluded regarding the work agreement. The other we couldn't touch.

THE COURT: Why had you alerted your stockholders to the problem you had a strike in the --

THE WITNESS: At that time when this was published there was no strike.

THE COURT: But you knew you were going to have --

THE WITNESS: We knew we were going to enter negotiations. I wouldn't have expected 99 to 1 that we are not going to be able to write the new working agreement after all we showed them and everything. I wouldn't have expected a strike with all the arguments and all the facts and figures we have been able to show the union. I didn't expect we would have a strike, or if it would be a strike I thought it would last a month, two, three, as it usually happens.

This was a very unusual attitude on the part

of the union, and it was addressed primarily to me , not so much to the economic facts.

I think it was an emotional issue to force Mr. Clairmont out of Lee. I may add many times during the negotiations Mr. Hess and the others said, "Why don't you sell this plant to somebody else?"

The idea was to get Mr. Clairmont out of the picture somehow or other.

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(After recess.)

MAURICE CLAIRMONT, resumed.

THE WITNESS: Your Honor, may I address myself to you for a minute?

I have taken off these two days from my office and I am engaged in business. If this doesn't finish today, I would very much appreciate it if I have to continue, should you next continue it next week instead of tomorrow because I would like to have tomorrow free to take care of my business because the way it goes it looks like it may not finish today and I would like to dispense with tomorrow if possible because I have to still run my business.

MR. TAYLOR: May I interject, your Honor?

Mr. Clairmont, would it be possible for you to attend court in the morning should we need you and then we can free you at, like, 11 or 11:30?

THE WITNESS: If I have to, yes.

THE COURT: Why can't you finish with him today?

MR. TAYLOR: Your Honor, there is a substantial amount to cover.

THE COURT: Then start covering it and stop arguing with him about theories and get the facts that you want to get and then argue to me about them.

MR. TAYLOR We were asked for an estimate, your

Honor, and I honestly don't think we will finish today.

THE COURT: Who is your next witness?

MR. TAYLOR: I was going to put on a witness in the interim since he is presently in town and can't be back next week, Mr. Fisher, on another part of plaintiff's case perhaps left unclear, so I was going to ask Mr. Clairmont to step down briefly and--

THE COURT: He is not going to step down today. Mr. Clairmont is going to finish today and can come back Monday, and we can take Mr. Fisher tomorrow.

MR. TAYLOR: And I was just asking if Mr. Clairmont would be available tomorrow.

THE COURT: He said he isn't available. He is entitled to some consideration.

MR. TAYLOR: Yes. That's all right.

THE COURT: But I don't know if I am going to let you go on forever. I want you to get facts out of this witness and to stop arguing with him. He is here not to give you legal theories but to give you facts.

And you do your part, and you listen to the question and answer it, and don't give any explanation as to why you did that, and if you are asked: When did you stop beating your wife? answer No, I didn't start.

THE WITNESS: O.K.

MR. MOSS: I hope his answer is Yes.

THE COURT: You must assume that he never started beating his wife.

THE WITNESS: I will just answer Yes or No whenever possible.

THE COURT: All right, and maybe we will get along much faster.

THE WITNESS: You were asking about the annual report of 1962.

MR. TAYLOR: Yes. We were reviewing that, and we were specifically reviewing the paragraph on page 4, and I believe we finished with this unless you had a comment that you were about to make.

THE COURT: I think the last question was one that I asked him.

THE WITNESS: Yes, and I have a comment to make because it was brought to my attention by Mr. Heinrich.

One of the reasons that we were anxious to take all the write-offs that was necessary in 1962 was because the company had quite a big profit about five years ago and, according to the tax laws, you can go back five years and recoup, so that's how we have been able to reduce our loss from a million four to eight forty, by going back five years and having our Uncle Sam pay us back some of this

reduction in inventoriws that were necessary so it was advisable to take as much as was necessary in tha year because we actually lost only half of it, and that was another reason that we tried to bring all our inventory and still not lose money.

Mr. ~~Henrich~~ Heinrich just refreshed my memory as to that.

If you will go back five years, you will see the company had quite a substantial profit and had to pay a substantial tax.

BY MR. TAYLOR:

Q Wasn't it a fact, Mr. Clairmont, that either at the outset of your original investigation of this company;s operations or certainly within the following year after you took over as chairman, that the crucial problem with this company, if there are any, was sales, and lack of sale volume upon which everything else depended?

A Even if we would have had sales, at those prices we couldn't sell.

THE COURT: I think he has explainéd that at great length. They obviously needed sales.

A Sales and costs are synonymous.

THE COURT: Talking about programming, don't forget tomorrow afternoon is motion day here so we won't sit in the afternoon.

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MR. TAYLOR: Oh, I see. So we will only have the morning, your Honor?

THE COURT: Yes.

Q But didn't you analyze the situation as being, as ~~sales~~ sales being the most paramount problem of the court, of the company, and so state that to the stockholders both in the 1962 Annual Report, the 1963 Annual Report, and the interim proxy statements of November 25, 1963 which concerned the sale of the Republic Rubber Division and getting the stockholders--

THE COURT: Are you stating that as a fact? You are not asking him that, are you?

Now ask him a question on the basis of that; don't ask him that if you know it's true. You know it's true.

MR. TAYLOR: Well, your Honor, the witness has denied it.

THE COURT: You are stating it as a fact, that he said sales were the most important thing.

Now, if you have a question to ask him based on that fact, ask him.

THE WITNESS: I am talking about profitable sales because I said yesterday that we could have sold more than our production at those prices, at a loss, and sales would

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have been no problem. But profitable sales were--

THE COURT: Don't ask him what the records in evidence already show.

Q Would you explain, by reference to Document 55-A--that is the 1963 Annual Report to Stockholders--

MR. TAYLOR: And, your Honor, to elucidate, this is while the strike was going on at Conshohocken and the Republic Rubber Division, it had been agreed to sell the Republic Rubber Division but it hadn't beem consumated.

THE COURT: You are calling his attention to what in 55-A?

MR. TAYLOR: To the last paragraph on page 3.

Q Now, Mr. Clairmont, in some interim review of the company's operations which you alluded to in the 1962 report--

A What?

Q --you said ~~that~~ in the 1962 report that a systematic or comprehensive review was under way but it was too premature to tell what the results were?

A Yes.

Q Now, in 1963 you had, for the 1963 report, the full results of that whole review; is that correct?

A As much as we could have. Facts were coming up every day.

Q And in this Annual Report I direct your attention to page 3 of that report, it was given at a time, as we just stated, when the Conshohocken Division was still on strike, and you had come to an agreement to sell the Republic Rubber Division to Aeroquip; is that right?

A Right.

Q Now, I would like you to explain the last paragraph on page 3 which for our purposes I would like to read part of.

(Reading) "In our Tire Division the lack of sufficient distribution to maintain production at reasonably satisfactory levels resulted in creating an unduly high generally fixed overhead in addition to the high labor cost.

The company had not developed at the opportune time sufficient desirable outlets for its tire production capacity relying primarily on one large customer and on its own branches acting for all practical purposes as wholesale distributors to small tire retailers.

The large customer who, only about six years ago accounted for approximately one-third of our entire production, curtailed and eventually withdrew his business from us.

At the same time the distribution through our own branches was substantially affected by the advent of

mass merchandising of tires by department stores, discount houses, large chains, et cetera, retailing their own private brands.

These large tire customers were demanding and getting low prices for their private brand tires which, when accompanied by the entire productions costs, we could not have met without losing money on such sales."

Mr. Clairmont, would you tell us and give us some explanation, please, the beginning of that paragraph, what is the unduly high general fixed overhead, which is affected by the distribution system of the company, the sales and distribution system?

A O.K. I thought I did that yesterday.

Q Well, then, briefly--

A We have a conversion cost of, let's say an average of 35 cents per pound.

About half of it is made of fixed overhead costs and the other of high labor costs because, as I said here, unduly high general fixed overhead in addition to high labor costs, so there were two elements: one fixed cost and the other labor cost.

THE COURT: Now, he is asking you to concentrate on fixed costs and explain what they were.

A Fixed costs means that if you make 5,000 tires

a day, or 1000 tires a day, you still have to pay for example, real estate taxes, which is a fixed overhead; you have to heat the plant, which is a fixed overhead, no matter what the production is. You have to keep a manufacturing man, which is, again, a fixed cost, no matter what, and other such items which, of course, on a per pound basis, become lower as production goes up.

However, for production to go up, you must have a competitive cost. However, our overhead would have gone automatically down if we would have been able to produce more.

To be able to produce more we must sell more. We can't eat up our tires, but the other costs which depend on labor, which was on our computation about 16 cents per pound, was in our plants seven or eight cents per pound.

Our cost of labor per pound--

THE COURT: He is asking about overhead. You have answered that question.

Q You referred yesterday to the fact that Lee had a ma and pa operation with regard to the Lee Tire Centers and--

A A what?

Q A momma-poppa operation. That is the expression

you used, the momma-poppa operation.

A Yes. They were selling to a momma-poppa kind of operation, which was a small garage some place and it was a typical small outlet. They were buying five tires and eight tires, and so forth.

THE COURT: In other words, they were selling at retail?

THEWITNESS: Practically. The equivalent of retail but without getting retail prices.

Q And the cost of doing business, didn't you attribute the cost of doing business in some substantial part to the fact that in effect the company was selling to itself?

A That's right.

Q Now, is that part of the cost of the tire to the ultimate customer?

A Yes, but that was not part of the conversion cost. That was part of the sales and administrative cost. That did not have anything to do--it was not included in the conversion cost.

Q So that when you talk about the fact that in your opinion the Lee tires cost more than competitors, they actually sold their products on the market at a profit, and the cost is only ~~part of~~ partly labor. It's their other costs

that were involved.

A Conversion cost is only labor and overhead related to manufacturing. The cost of the tire, while it is still in the plant; not when it goes outside. At the end of the process it cost you so much.

Q Obviously there were other problems besides labor. That seems apparent. What were you doing during this entire period to cure those problems, to bring your company into more competitive a position?

A I thought that I explained that you cannot bring a company in a competitive position unless you have--

THE COURT: He didn't ask you what you couldn't do. He just asked you what you could do. You told us--

A The only thing I could do was to get a cost that would have been in line with our competitors.

THE COURT: He asked you what you did to cut down on fixed overhead.

THE WITNESS: Everything that was possible to the bone.

THE COURT: All right, tell us what that was.

We know already that you took away from there Mr. Garthwaite's Cadillac.

THE WITNESS: Every executive had to take a 10 to 20% or a 10 to 15% cut in pay, including myself, including

every key man in the company, every possible frill, even advertising because advertising didn't do us any good. There was nobody to advertise to. They didn't have to advertise to our own branches, so we cut down on that.

Probably it consisted of hundreds of little items but we cut down to the bone every possible expense of overhead to the point where we were even criticized to be that Spartan.

Q What were you doing about sales, improving sales during this period from the time you became chairman?

THE COURT: He told us all of this yesterday.

A I told you that you cannot improve sales unless you have price--

MR. TAYLOR: I heard about ~~recuding~~ reducing current overhead.

THE COURT: He told us in detail what he did about sales.

MR. TAYLOR: I stand corrected, your Honor, if that is the case.

Q Had the program that you were testifying about yesterday concerning improving sales achieved a ~~noteable~~ notable success by the date--

THE COURT: He also told you that.

Didn't you listen to him? He said he achieved no

success and the reason he said it achieved no success was because he couldn't get anybody to work for him. It may or may not be truthful but that is for me to decide and it won't change by getting him to say it all over again today.

Q Do you know when the Conshohocken operation started to make two-ply tires?

A I don't remember exactly but I know--the only thing I know is that it was much later than the rest of the industry.

Q I believe you testified something to the effect that--

THE COURT: Two-ply tires?

Q --there was a change from 4-ply to 2-ply tires, is that right?

A That's right. The whole industry started to change from 4-ply to 2-ply.

THE COURT: I see.

Q In the early '60's, we are referring to.

A I wouldn't know.

Q You made a statement, I believe, that the company you thought was two years late?

A Much later than the rest of the industry.

Q That the machinery was old and unsuited for this

operation?

A No. They didn't need much different machinery but they always moved very slowly after everybody did something, only when they couldn't help it, they started. They were very averse to change.

Q They told you they followed the market, in effect.

A They always followed the market, the models, the type of tire that was produced, and they were always late when they couldn't help it.

Q Do you know if the Conshohocken operation maintained a time study department?

A I think it was more or less symbolically maintained but never used very much.

Q Were there employees paid by Lee who were full time in the Conshohocken plant who were on time study?

A I couldn't tell you for sure but it was almost never used.

Q Do you know if the union had time study people, full time time study people who were on the payroll at the Conshohocken plant?

A I don't know that.

Q And assuming there were, both management and union people, you also don't know what they were doing during the period of time in question here?

A No.

Q You made a statemant yesterday concerning the fact but you were referring to--

MR. TAYLOR: I would like to point out to the court also, it's been pointed out that the witness was referring to a different plant, Cooper Manufacturing, which was different than the one that we thought he was referring to. That was an industrial products rubber plant.

Q In any event,didn't you make a positive statement with regard to Conshohocken that they had too many paid holidays, and that that was the justification for your request to reduce one holiday? They had Easter Monday, I believe, which no one else had.

Wasn't it a fact, or do you know whether it is a fact that Cooper, in its tire plant, had the same holidays as the rest of the industry, had eight paid holidays, and that Lee Tire had eight paid holidays even though Cooper may have had George Washington's birthday off instead of Easter Monday?

A They had one less holiday than us.

Q Did Lee Tire, in the Conshohocken plant, in fact, the whole company, really, didn't they follow the Big Four wage pattern to the best of your knowledge?

A Who?

Q The Big Four.

A Who followed?

Q Lee.

A Lee? Yes; always.

Q Historically always followed the Big Four?

A Yes.

Q To your knowledge, had Cooper followed the Big Four pattern?

A Not entirely. Always with some different adjustments, or things that I think were a little bit different.

Q Isn't it a fact that Lee varied the Big Four pattern, varied from it, depending on its local circumstances to some extent?

A I think that Lee, from what I have been told, always--the union got from Lee the best from everybody because they knew they had no opposition and they have to give in. In other words, the Lee union contract always had the best feature for the union from every possible union contract because they knew they were not going to negotiate or oppose it.

Q Isn't it a fact that the bulk of the industry, the producers who pretty much are in the same category as Lee with respect to sales and physical plant capacity,

and such, generally speaking followed the BiG Four wage patterns?

A I guess that's correct.

Q You also said yesterday, and I just want to make sure that you can refresh your recollection so that your memory is correct, that you indicated that you had come upon the scene in 1962 in acquiring your stock interest and management position, and that you first had sessions with, or some negotiations or dealings with the local leaders, I believe particularly at Conshohocken in this case, before you went hopefully over their heads, to talk to more knowledgeable people at international; is that correct?

A Yes. That had to do with the welfare.

Q Can you tell us when you had your first meeting with the local union leaders with respect to this welfare agreement?

A I think it must have been around October, if my memory --

THE COURT: '62?

THE WITNESS: '62.

Q Had you met anybody from the local unions, to the best of your knowledge, before October 1962?

A From the local union?

Q Yes.

A Not as far as--Maybe in September or October, but after I became chairman I do not think that I met them before I became an officer of the company.

THE COURT: You were a director first but not an officer?

THE WITNESS: Yes.

THE COURT: Your chairmanship was your first office?

THE WITNESS: Yes.

Q Do you recall on July 2nd and July 3rd, 1962, on either ~~either~~ or both of those dates, having a telephone conversation from your New York office with a Mr. Kenneth Oldham, the pension and insurance director of the international union at Mr. Garthwaite, Sr.'s office at Conshohocken?

A I believe that's correct.

Q Would you tell us, from the best of your recollection, would that be the first individual either from local or international that you had any dealings with in the Lee situation?

A That was, I think, the first contact I had with somebody from the international union but not the local union.

Q Well, prior to then, can you recall when you

met anybody from the local and who you met?

A Prior to when? To July?

Q Prior to July 2nd and July 3rd, yes.

A I don't remember having met anybody.

Q I thought I understood you to say--

THE COURT: Misunderstood. You misunderstood him. We are both in agreement on that.

Q Could you tell us the reason for that conversation and the substance of this discussion you had with Mr. Oldham?

A At that time I was a director of the company, and I was fully familiar, probably more than any other member of the board, because I was by far the largest holder of securities of the company, whereas all other members of the board had only nominal holdings of the securities of the company, so I took the time to study very well this new pension agreement, and I probably knew more about it than anybody including Mr. Garthwaite, and Mr. Garthwaite wanted me to explain to Mr. Oldham the importance and the reason for the changes required.

Q In other words, you had formulated an opinion with regard to the 1961 welfare agreement and had become thoroughly conversant with it to the point that Mr. Garthwaite felt that you were the best one to discuss it?

A And to present the arguments for the company why it is necessary or desireable from the point of view of the company to obtain such changes.

Q Now, wasn't it a fact that this was an agreement that was signed in June of 1961 and had already been in effect for a whole year?

A It was an agreement that had been signed in '61 but it had not been in effect, or no funding had been done until then.

Q Well, now, by funding are you referring to Article 1 being the pension agreement, pension plan, which is ~~almost~~ always part of the welfare agreement?

A That's right.

Q Are you specifically referring to the funding aspect of that Article 1 pension agreement?

A Yes, because the funding was becoming due right then at that time.

Q July 1, 1962, is that correct?

A Yes.

Q As of July 1, 1962 the company was to begin funding, the pension agreement, that is, pursuant to that agreement; is that correct?

A That would be so.

Q Now, you said certain problems came up which

you had analyzed and discussed with Mr. Oldham at this time.

You also just said that the funding aspect, or that part of the agreement wasn't effective yet.

I would like you to tell me why wasn't it effective and what were the problems that you viewed and expressed to Mr. Oldham?

A Because being a very substantial obligation, that would burden the company every year to the extent of about $500,000 ~~$500,000~~, a burden the company did not have before, plus an obligation that would go into many millions of dollars for the past service liabilities.

We felt that this ought to be approved by the board of directors, by the stockholders, and of course eventually by the Director of Internal Revenue.

It had to go through all of these three stages to become valid.

If the stockholders desired, or if the board of directors would desire to submit it to the approval, that is.

I felt as a large stockholder that the company was not well protected for various reasons. I think there were four points that we wanted changed in that agreement.

One of those had to do with the funding, and the other one had to do with the co-terminus, and that was

really the most important point.

We felt that the working agreement and the welfare should both expire at the same time as was the normal thing in the past.

I think that that was the first time that the union put the welfare agreement one year later than the working agreement, the expiration of it.

So I said that the company would be entirely at the mercy of the union because the union could be capricious--

THE COURT: Is this what you said to Mr. Oldham?

THE WITNESS: No. To Mr. Oldham and to Mr. Garthwaite, and to everybody concerned, why I felt that this is an unfair and ~~unbusinesslike~~ unbusinesslike proposition.

I said that the union knows that we have to support very substantial financial burdens for another year so they can go on strike very easily, lightheartedly and in the meantime they get support from the union, and all the other benefits, which make them be very capricious or easygoing about strikes.

If they know they will lose all other benefits, they will think two or three times before deciding on a strike. In other words, it put the company in a disadvantageous position in negotiations, and I was trying to obtain this modification that both agreements should expire at the

same time, which I did not succeed in because we eventually had to give in.

Q Excuse me. On this point, ~~thou gh~~ though, you already are aware of the fact, and it is stated in this particular local's case, that this particular local never had a strike before?

A Yes.

Q Those are two points you mentioned. You said there were four. Would you give us the other two points?

A I don't remember. If you will give me the sheet--

Q Perhaps I can help you.

A I do not remember what the other points were but we did not succeed in obtaining any one of them.

THE COURT: What is the point of having him say that?

THE WITNESS: Since we ~~have~~ gave in on all of them, and the reason we gave in is because I wanted to create good will with the union to show that we were flexible, we are people that can give in knowing that the contract is coming up for negotiation.

(Continued on next page.)

THE COURT: Refresh my recollection, Mr. Taylor, on this provision. At this time the funding had not started?

MR. TAYLOR: It was due to start July 1, 1962, your Honor.

THE COURT: And this telephone conversation was --

MR. TAYLOR: July 2nd, July 3rd, at Mr. Garthwaite, Sr.'s office.

THE COURT: It was due to start July 1st?

MR. TAYLOR: July 1st. They were supposed to start funding pursuant to that agreement by July 1st, 1962. And it was at about that time that the union -- we have had testimony, your Honor -- became aware that funding had not started and in fact the company said that they had not ratified the agreement.

MR. MOSS: Your Honor, that is not quite accurate. The testimony was that in early May Mr. Oldham became aware, through Mr. Hess, that they had received some communication about the pensions and that thereafter Mr. Oldham got another communication or had a telephone conversation with Mr. Hess who said that he had received the proposed amendment to the welfare agreement, which was dated June 3rd or June 15th; and it was after that that Oldham had the meeting with Garthwaite, who said, "You really ought to talk to Mr. Clairmont."

THE COURT: At that time did the company still have the legal right to reject, or is there agreement on that?

THE WITNESS: Yes, they did.

THE COURT: Your position is that they did?

THE WITNESS: Yes.

MR. TAYLOR: We had the different positions, your Honor. Mr. Oldham specifically stated that it was not industry practice --

THE COURT: Answer my question. Did they have the legal right?

THE WITNESS: They had the legal right.

MR. TAYLOR: It is a conclusion, your Honor.

THE COURT: Legal right does not depend on industry practice, it depends on what the contract said.

MR. TAYLOR: Maybe I did not understand your Honor's question.

THE COURT: I am trying to focus on whether at the time of this conversation, under the terms of the contract -- if you agree; obviously, if you do not agree, you do not -- did the company have the legal right not to fund, to reject the funding part of the agreement, which would precipitate the union's right to strike and all other kinds of things?

MR. TAYLOR: I guess we would say yes, your Honor,

if it would be assumed that they still had or could not be estopped from denying their confirmation of the agreement a year earlier. Yes, technically --

THE COURT: There is no question they confirmed the agreement. As I recollect it, the agreement had a provision in it subject to separate confirmation on this funding thing.

MR. TAYLOR: Yes, subject to approval by the board of directors, of the stockholders.

MR. AUERBACH: Your Honor, I do not think it was a separable. I think --

THE COURT: Let me see it. That is a better way of looking at it. I just want to find out what the legal position of the company was at this time.

THE WITNESS: The board of directors --

THE COURT: I am not asking you, I am asking the lawyers.

MR. TAYLOR: I believe, your Honor, that is 36, and 37 is the welfare agreement; regular 36, and regular 37 is the amendment to the welfare agreement.

THE COURT: Where does it say about the funding?

MR. MOSS: The funding is Article 7, but the amendment article we are talking about is Article 5 on page 24.

THE COURT: 37?

MR. TAYLOR: Pardon me? What was that?

THE COURT: Article 5, you say?

MR. TAYLOR: Yes. He is referring you to page 24, your Honor, Article 5, on duration and termination of document 36.

THE COURT: Document 36, page 24?

As I read that agreement, and maybe there is something in labor law that I am not aware of, but, as I read that agreement, it is perfectly clear that the company is going to submit this to its board of directors and stockholders and give the union notice of what the board of directors does about it, approval or disapproval.

MR. TAYLOR: Correct, your Honor.

MR. AUERBACH: But it does not break up the agreement, your Honor.

THE COURT: The pension plan provided in Article 1, that is the only part of this agreement that provision refers to. So it does break up the agreement.

MR. TAYLOR: The testimony of Mr. Oldham, at least in part on this issue, is that the plan, the whole welfare agreement, had been in effect and had been operative.

THE COURT: Yes.

MR. TAYLOR: And even if technically this approval,

with respect only to the funding aspect, which for our purposes, we will assume for the moment, was obviously a year later, and they had not received any notice of approval or disapproval --

THE COURT: The contract clearly says they have got to give notice of approval or disapproval.

MR. TAYLOR: So for the purpose of this particular testimony now, even if we assume that the company had an absolute legal right, without getting into the argument, had an absolute legal right to approve or not approve, on ~~July~~ June 30, 1962, this agreement, which is now a year old and the next day they are due to begin funding, this is what Mr. Clairmont says he said, "I have just intercepted the situation; in effect I'm saying, 'Now, fellows, this is what I want to do.'"

I believe that is what he is testifying to. For this purpose I am quite willing to continue along.

THE COURT: I just want to orient myself as to the relationship between this and the funding.

BY MR. TAYLOR:

Q We are talking about the July 2nd or July 3rd conversation with Mr. Oldham, and you were outlining the points to him, and he had been specifically referred to you to discuss the matter with him.

You said that you felt that before you approved or before the company approved, the board of directors' approval, et cetera, this particular agreement and began funding, certain inequities should be resolved, and one of which is a co-termination date.

I believe yesterday you testified, and correct me if I am wrong, that the language of Article 2, Section 6, paragraph 1 -- and that is the introductory paragraph to the special distribution section of the welfare agreement -- should be changed; and if you will permit me I am reading from document 87A, and I will read it -- Mr. Clairmont can look with me -- this is a document that was attached to the letter of Mr. Garthwaite's of July 25, 1962, to Mr. Hess, and I refer you specifically to page 2 thereof --

THE COURT: Page 2 what?

MR. TAYLOR: Yes, your Honor --

THE COURT: What page?

MR. TAYLOR: It is possible you may be missing that. Document 87A.

MR. MOSS: Do you have it, Mr. Clairmont?

THE WITNESS: I have it.

THE COURT: Yes, that is missing.

MR. TAYLOR: Yes, I will get another copy. Let us see what we can do for the moment.

THE COURT: No, 87A is blank, right.

MR. TAYLOR: Your Honor, just so you will see, I am directing the witness first to this paragraph.

Q Mr. Clairmont, the introductory language, this is one of the points that you were getting at, isn't it, concerning the fact of whether or not a special distribution payment should be made in the event that a strike is under way at the plant?

A That was our original request. We told Mr. -- or I told Mr. Oldham that it is -- the company was at a great disadvantage in bargaining, and the union could always, by a strike, put us in a position to pay this discontinuance -- whatever they call it -- special distribution.

I told him that means that any time we negotiate with the union --

THE COURT: We had all this yesterday. What do you think you accomplish by doing it again?

A The union did not want to go along, so we remained with all the language, but clarified, and I asked -- it means that the company is forever -- I asked him, "If we leave the whole text, tell me what you mean by that. Does it mean that the company is forever obligated?"

He says, "No, only during the life of the agreement."

So I said, "Then put it in and clarify it," which

they did.

Q In 1962, July 2, 1962, one year before the termination of the collective bargaining agreement or working agreement, did you anticipate there was going to be a strike?

A No, not at all.

Q Not at all.

A The possibility always exists because strikes in the industry are quite frequent. As a matter of fact, ever ~~even~~ since Goodyear took over they had two strikes over there in Lee.

So the possibility of strike always exists ~~enters~~.

Q Forgive me, I do not want to belabor the situation, but, Mr. Clairmont, the similar language is applying under retirement benefits of Article 1 --

MR. TAYLOR: This is the first page of the same document, your Honor, in the very first paragraph, number 4 there, to be amended, which inserts similar language concerning the people going on pension.

THE WITNESS: Right.

MR. TAYLOR: During an unwarranted and unconscionable strike, et cetera.

THE WITNESS: In other words, we wanted a deterrent for the union to not encourage them to go on strike.

THE COURT: Some people need to have it said ten

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times, I get it the first time.

Q Perhaps we can best capsulize this: these negotiations ended, did they not, with an agreement on December 17, 1962?

A That's right.

Q In which, I believe, the essential elements of which are pretty similar to the very first proposal that you made to Mr. Oldham, which I will show you. It is designated 118A, and it bears a handwritten date of June 16, 1962, and I ask you if, in substance, the issues between the company and the union -- if this controversy between the company and the union -- concerning the welfare agreement wasn't ended with an agreement pretty much along the line as you first proposed, in the very first proposal to the union on July 2, 1962, clarifying certain language and specifying approvals, approvals of the Internal Revenue Service and the company, et cetera, to the funding, and if that was not the end of the controversy here?

A The agreement of December sort of put an end to our controversy regarding the welfare agreement, yes.

Q Without any material change?

A Whatever it was.

THE COURT: The document on its face shows that. Why do you ask the witness these questions?

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THE WITNESS: Whatever is there.

MR. TAYLOR: Very specifically, your Honor, it is not a secret, the fact of co-termination of the welfare agreement, which the entire industry had overlapping working agreements --

THE COURT: But how do you accomplish anything by asking the witness these questions to verify the documents? They say what they say.

MR. TAYLOR: Well, all right, your Honor.

THE COURT: This is a trial. This is not a movie. I think we have to adjourn until two o'clock.

(Luncheon recess.)

AFTERNOON SESSION

2:30 PM

MAURICE M. CLAIRMONT, resumed.

DIRECT EXAMINATION

BY MR. TAYLOR (Continued):

Q Mr. Clairmont, I would like to refer you once again to document 55A, the 1963 annual report of the company.

A May I have it?

MR. MOSS: I will hand it to him.

1963?

MR. TAYLOR: Right.

Q On the bottom of page 4 and the top of page 5, if you would read it, please. I only want your conclusion.

THE COURT: Read it to yourself.

MR. TAYLOR: Yes.

A Yes?

Q This paragraph is referring to the assets converted in the sale of the Republic Rubber Division; isn't that correct?

A Some of them, and some probably because we didn't have as much inventory and with the strike couldn't operate. We didn't have as much inventory as before. Parts of the

sale of the Republic Division and partial reduction of inventory.

Q You mean the reduction or sale of inventory without the consequent buildup?

A If you see, our inventories were in '63 only $3 million versus 8-1/2 the year before.

Q I am sorry, What are you referring to?

A If you look at the assets.

THE COURT: What page is that?

THE WITNESS: Page 6 of the report.

A We have inventories of about $3 million versus 8-1/2 the year before. So it means we reduced our inventory from 8, which became cash.

Q Is this a part of the write down, or is this after the 1962 write downs?

A No, it is after the write downs. This is just a reduction of inventories.

Q Right. And during this particular year, Conshohocken was on strike so there was no production going on there; isn't that right?

A Yes, there was production going outside Conshohocken but on a much limited basis at US Rubber and Mohawk.

Q You also testified that the company had been selling off its tires, which it had stored in the warehouses

at about the time of the commencement of the strike at Conshohocken; you already testified to that; that is correct, isn't it?

A Yes, if they don't have any stock in process, which is a good part of the inventory, because we didn't manufacture any more.

Q You had pretty much cleaned out the Conshohocken plant in June of 1963; is that correct?

A Yes, because there was no more production.

Q Right. Okay. Now, the conversion of the Republic Rubber Division assets into the cash specified in the paragraph you just read was a ~~boom~~ boon to the company?

A A ~~boom~~ boon?

Q A great benefit to the company in two respects, sir -- I ask if you agree: It got rid of losses, loss operations, and --

A Republic was not losing money in that year.

Q It was not?

A No. It made a hundred some-odd thousand dollars in nine months, as I showed you.

Q But you testified earlier that that division had serious problems and was at least minimally profitable and certainly not profitable on invested capital. That was the statement I believe you made.

A But at least it did not sap the assets of the company by staggering losses like the other one, losing close to $3 million a year. We could have continued with Republic if we had to without producing somehow. We could have probably continued with Republic and even produced higher profits than during that year, especially if the union would have accepted our demands then.

Q Except for the contingent liabilities which reference is made to in note 9 of the financial statement. Note 9 states that there is a contingent liability for the discontinuance of the salaried employees' pension plan and, in addition, losses from the carrying charges of the Conshohocken plant which was idled by the strike.

A That's right.

Q All right. So this states the cash position, all right, of that company and the company benefitted to the amount of a total of $5-1/2 million; is that correct?

A It did not benefit at all. Benefit means a profit. It just transformed some assets, inventory -- or the assets of the Republic Division which had been sold. It did not benefit. It just is a conversion from certain assets to other assets.

Q You said that these assets were threatened by dissipation by continuing substantial losses. What did you

mean by that? That is the top of page 5, the first sentence:

"Thus, company assets, the values of which were threatened by dissipation through continuing substantial losses, have now been largely converted at not too great a financial" --

A Obviously, this inventories we reduced it by $5 million. If this would have stayed there subject to obsolescence, there would have been a substantial dissipation of assets. The inventory is not like wine, they become worse with age.

Q I refer you to the statement, prepared statement, that you gave to the union on July 3, 1963, which is contained in document number 93A.

A I believe I have that one. Yes, I have it.

Q I specifically want to ask you a question first.

In your prepared statement given that date, you told the union, didn't you, that the company, the previous management, in six years had spent approximately $6 million to bring the plant up to date, and you have testified that on your initial investigation you found the plant to be relatively modernized? All right. I wonder what you think of this kind of an investment with regard to your statement that there was a non-existent management prior to your tenure.

dhdh6 Clairmont - direct

A The fact that they spent money?

Q For modernized equipment which you were bragging about in effect on July 3rd.

A Yes. I think this is the worst mark for any management to spend 6 million without taking advantage. You spend $6 million to increase productivity; or the Strong-Narovec report shows in spite of spending $6 million the productivity went down.

In other words, they didn't get any benefit from the spending of $6 million. You do that in order to cut your labor costs, not to increase your labor costs.

Q Okay. Now, in this prepared statement and on this date, did you offer a solution to the union which was substantially that if they -- or I believe you said, didn't you: "Subject to the union's accepting all of the company's proposals, as amended to date, you submit a profit-sharing plan," and you describe it in this particular document; is that correct?

A That's right.

Q Now, the company's proposals, as amended to that date, were -- and I just want you to acknowledge without investigation that these were substantially the proposals --

MR. TAYLOR: Showing the witness 98A, which was the company's revised proposals as of June 7th or 14th, as

the case may be, 1963, a very substantial document, and the attachment to document 13A, being a letter of June 28, 1963.

THE COURT: I am sorry, I missed you. I was reading. I did not hear what you said.

MR. TAYLOR: Showing the witness ~~witnes~~ document 98A, which are the revised proposals alternately of June 7th or 14th, 1963, and document 13A, the attachment to that letter of June 28, 1963, which had, I believe, the latest revised proposals of the company at that time.

Q Mr. Clairmont, the only question I want to ask you: are those substantially the proposals that you were asking the union to accept, as a quid pro quo, or in consideration of the profit-sharing plan which you were then offering them?

A I wouldn't know that. I know that this document of June -- I can ~~can't~~ see that these were the proposals as of June 7th and June 28, but whether they were the same on July 3rd, I do not know, because we were constantly making changes and further concessions.

Q Would you say, from your knowledge and memory, that the proposals certainly included the 20 per cent wage cut and the job evaluation program not tied to the grievance and arbitration procedures?

A They were tied to the grievance and arbitration. It included them but tied to the grievance and arbitration.

Q We have been through that and I won't take time to go over that again.

A All right.

Q Now, it had to be the whole package that the union accepted; that is clear?

A That's what we asked them, but the union was free to make counterproposals.

Q Yesterday you said that the company had come down to about 40 major changes which they wanted the union to accept, but you had reduced that, you made concessions to reduce it to what you considered eight essential items, and I believe the eight essential items are contained in the work rules which we have examined and you are familiar with; is that correct?

A That's right.

Q You also stated yesterday that the primary item for the company was the job evaluation program?

A Tied in with the wage reduction, because the wage reduction was the incentive for them to produce more under the job evaluation.

Q You mean its cumulative effect? You take a wage cut and then you take a tighter incentive program?

A And then they can make up the 20 under the incentive program. They can make the 20 plus even more. If they do not have the wage cut, then they make the same wages. What is the use to try to produce more? We still have a ceiling under that.

Q If the union accepted or offered to accept the job evaluation and incentive program pretty much as the company had proposed, wouldn't that be a significant concession to the company, without the wage cut, that is?

A Maybe not, because they still have a guaranteed floor. They wouldn't have exerted them to produce more. That was a sort of extra tool to make them produce more, in order to be able to recouperate the wage cut.

Q Did you use the word "floor"? They would still have the same floor; is that the word you used?

A Yes.

Q By that you mean the same base rate?

A That's right.

Q But in a job evaluation program, if you are going to re-evaluate all the jobs in the plant, you would now have a complete new classification of the job, each to each other; that is a job evaluation program, yes?

A Job evaluations, there are two things: we call it job evaluation for simplification reasons. Actually it's

made of two parts: one is job evaluation; the other setting up a revision of piecework rates.

Q Right.

A The third one was changing some hourly-paid employees to piece rate jobs, and in other words there were three major -- we call it under the general simplification purposes -- title job evaluations.

Q And as part of that you do adopt a new rate system, don't you, new base rates, new incentive rates?

A That's right.

Q So, therefore, you don't need a wage cut to get your job evaluation program put into effect?

A Let me explain, if I may, why we asked that.

Q All right.

A We are going into a job evaluation that has never been done, because other companies have done already that, and still they revise it constantly as conditions dictate.

We never have done it in the history of the company, and we had to do it for the first time, take every job in the plant, set new rates, which would have lasted at least between one and a half to two years. Every new move we would have wanted to make would have been challenged by the union and would have had to go through grievance and arbitration, if that was so it would have taken two to two and a half years to go through the process because the union would always protest saying, "You put it too tight, let's discuss it, "and grieve about it, and then after the grievance you go to arbitration, and then you go to the super arbiter, and we wanted the industrial engineer with the cut of 20 per cent and them knowing they have to make it up, that they would be able to do it of their own free will

knowing they could make up to the wage they were making before. They would then have cooperated with us in that instead of opposing or obstructing or delaying that program.

Q How did the company arrive at its demand for a 25 per cent wage cut? Is that geared to any economic statistics that were in your hands?

A We judged it this way. We knew that the United Labor -- what do you call them, Rubber Tire, the Rubber Union.

Q United Rubber Workers, you mean?

A Yes. United Rubber Workers, they also had people in industrial rubber plants, and statistics provided showed 2.50 to 2.60 an hour was an acceptable hourly wage for a member of this union in this unit. We said if a man makes 310 and we take off 25 per cent he still makes an acceptable wage, apparently, because many people in this union are working under this average wage. It wasn't that a man couldn't live on the wage or something unheard of.

Q You said that was for industrial rubber goods?

A Yes, but still rubber plants making another type of product.

Q You felt it could be applied to a tire plant?

A That it was an acceptable rate because many people

in the union were working for this wage.

Q National statistics, I am sure you will agree, vary from location to location, from higher income, higher expense areas --

A That was a national average.

Q Okay.

If the union were to accept all of your proposals -- forgive me, I was overlooking a point.

Yesterday you did say everything -- even in the eight we are now saying was considered essential -- was subject to bargaining, you could give it away; the only thing essential was the wage cut and the job evaluation program.

I want you to square away for us once and for all did the union have to take all the eight or only one or two?

A Let's put it this way. If the union would have accepted the most important, which was the job evaluation program, which every other company had, plus the wage cut, and we might even have compromised to a 15 per cent wage cut instead of 20 -- we asked for 25, and then we went to 20, and if the union said, "We willgive you 5," maybe we will compromise at 15, but something to show us something as a whip for them to produce more. We may have given a paid

holiday more, or things like that, because that wouldn't have made all the difference between life and death, but this did.

In other words, other little things were there. The off standard 100 per cent, maybe we would have accepted 95 per cant instead of 90, and things like that perhaps we might have been able to meet midway.

Q The consideration for accepting all the proposals as set forth in the work rules essentially was a profit sharing proposal, and in order to save time I am going to ask if you will agree this was the proposal you made?

A These were the two alternate proposals.

Q The proposal is that a profit sharing program equal to 10 per cent of the "pre-tax" return on investment of the company's invested capital, which you then stated was $16.5 million. So we are talking about 10 per cent of pretax earnings, which would be $1,650,000 before taxes; is that correct?

A Yes.

Q That is the yardstick now, this is the standard by which we are going to go into a sharing?

A Yes.

Q Now say the excess will be shared in the proportion of two thirds to the company and one third to the employees

on a pro rata basis in the bargaining unit, etc.,to the extent they were working during this period?

A T hat's right.

Q Is that the essential element of the profit sharing proposal you made to the union?

A Yes, it was, but coupled with also showing them that we were asking only for a 10 per cent return "pre tax" which would be equivalent to 5 per cent after tax, and we showed them every other company, Cooper was making 29 per cent, Mohawk was making 16 per cent, Goodyear 20 per cent -- we were satisfied with half of what other people were making, actually, so we were very modest in asking for a minimum return of investment.

THE COURT: Don't explain; just answer his questions.

THE WITNESS: No, no, because it is coupled to something else. We cannot let one thing be taken out of context without completing the rest.

THE COURT: Mr. MOss can bring it out if he thinksit is important.

THE WITNESS: All right.

Q Just in summation on this point, it is obvious you felt this was a very fair proposal you were making?

A Yes, which would have given a union a tremendous

amount of money.

Q You also brought into question, or the other alternative, a productivity sharing proposal; is that correct?

A That's right.

Q This was outlined in principle to be followed up by negotiations if the union were going to go along with it; is that correct?

A If the union would come to an agreement with us.

Q You didn't come out with a detailed, itemized propesal but just the idea?

A A very itemized proposal to give figures how it would work in dollars and cents. It was not general; it was very specific detail of three pages with data and arithmetic and everything else.

Q You wanted to reduce the cost of labor from 15.2 cents per pound --

A Around fifteen cents.

Q -- to about 12-1/2 cents per pound on the wage cut, and then you were going to share over the next ensuing period of time based on however it is negotiated -- you were going to have a sharing to the extent that labor by dint of its efforts could produce that much more that would reduce the cost of labor per pound below 12-1/2 cents, and

you were going to share on that basis?

A No. Let me explain. I told them the other companies have a 7 cent labor cost, we have 15 almost, a little more than double.

I said that if they reduce it only from 15 to 12-1/2 they will be making up all the wage cut that I was suggesting. Would they go less, under 12-1/2 and closer to what our competition was, they would be making much more than they were making.

I said it's enough to go only from 15 to 12-1/2 for you to recuperate with all the arithmetic shown right there.

Q And the union turned you down on this, or said they would study it?

A No, they ~~truned~~ turned me down. They made one counter proposal: They want the same wages but they will accept' 5 per cent in stock.

Q What was your reaction?

A They could sell it in the market and dilute your equity.

Q You reduce the equity, but you don't reduce the cash reserves of the company. You were saving operating capital.

A We had no problem of cash. That would have been

of some help to a company that was strapped for cash. They can take the stock and go on the market, so it was like cash. That was no joke.

THE COURT: I am not an SEC expert, but I assume it would have to be registeered before he could do that.

MR. TAYLOR: No. As a matter of fact, we had testimony it could be they would have paid in treasury stock, and they didn't have to be registered. That is repurchases by the company onthe open market, and it no longer has to be registered.

MR. MOSS: Nobody testified to that. There was some discussion with Mr. Vasko, who said he thought so. There was no testimony.

MR. AUERBACH: If it was treasury stock tht would not have to be registered.

THE COURT: I am not an SEC expert,but I would think putting all this stock on the market would require registration, but that's beside the point. Too bad we don't have Judge Duffy here; he could solve this question.

Q I refer you to Document 86-A, or Exhibit 86-A. Would you review that for a moment, Mr. Clairmont.

(Pause.)

Q I specifically direct your attention to the

bottom paragraph of the first page, and the continuing portion on the second page.

The fact Mr. Garthwaite, Jr., as presidant of the company signed this particular letter, I just want to make sure you have seen this before and specifically when it was issued.

A Yes.

Q You had knowledge and approved of it in the usual course, didn't you?

A Yes.

Q The statements made at the bottom paragraph of page 1 -- and I specifically want to read parts of it to you and see if you agree --"The main reason for the substantial losses of the Tire Division is its low level of sales which makes it necessary to operate this plant at a very low rate of production in relation to its capacity.

"As stockholders have been previously advised, the basic reason for this situation is due to the company's failure to create in the past an adequate distribution through a network of independent distributors of the type to which tire manufacturers normally sell. Therefore, despite a comprehensive program to cut all variable costs, the Tire Division has operated with a high fixed and semi-fixed overhead which while necessary in order to keep this

Division functioning is completely out of proportion to the present low level of production and raises costs to a point where substantial losses are inevitable as long as this situation continues."

Then it continues:

"The program of gradually developing new, desirable outlets under the present extremely competitive conditions in the tire industry is a long, arduous and costly one, and until a proper distribution can gradually be built tire production will have to continue at an abnormally low rate in order to avoid inventory accumulation out of line with the Division's sales picture."

In order to complete it, the next paragraph:

"The sales problem in the Tire Division is further complicated by the effort to eliminate in an orderly manner a certain number of customers representing poor credit risks, or with whom the cost of doing business is prohibitive."

THE COURT: That's the mama and papa ones, I suppose.

Q "And to concentrate on a larger, more desireable class of customer of the type to which manufacturers normally sell. The need to secure such customers require a downward adjustment of the customer's price structure of

tires, which also contributed to the loss."

I ask you, Mr. Clairmont, at least as of June 12, 1963, wasn't that the problem of the Conshohocken Tire Divison?

A We go from there further and explain why.

THE COURT: The answer is "yes" to his question?

A The answer is yes, but we go further and explain why this --

THE COURT: Mr. Moss will go further and explain why, if he thinks it is necessary.

THE WITNESS: Okay. If we are picking out of context one paragraph -- anyhow, it's there, so I was aware, I subscribed to everything.

Q I direct the witness' attention to Document 61-A nad 62-A, being the proxy statement of November 25, 1963, concerning the sale, the impending sale of the Republic Rubber Division, and Mr. Clairmont's covering letter to stockholders of the same date.

Mr. Clairmont, these were sworn statements to the SEC, weren't they?

A I don't know what that is you are feferring to?

Q The proxy statement was filed with the SEC under oath by the chief executive officer of the company?

A Yes.

Q And as such you would have signed all the pertinent statements reflected here in the printed forms?

A I was aware of them, but I don't always sign.

THE COURT: You endorsed them?

THE WITNESS: Yes.

Q This is dated November 25, 1963, and, Mr. Clairmont, in not your covering letter but on page 5 of the proxy statement itself, which is part of the summary of description of the operations and properties of the company's divisions, and the first full paragraph at the top of the page, just reading it to yourself I want you to confirm that the statement is almost exactly the one that Mr. Garthwaite gave to stockholders on June 12, 1963, and still remained the situation of the company in November of 1963.

THE COURT: I can tell it is the same thing. Why ask the witness that? Why ask the witness if two paragraphs are the same?

THE WITNESS: I subscribe to everything.

MR. TAYLOR: That conditions hadn't changed at all?

THE WITNESS: Whatever is there I agree with.

THE COURT: This man isn't here as a sounding

board to your summation. He is here to produce evidence.

THE WITNESS: I can say now in one big statement I subscribe to everything that was under my signature.

Q On page 6, there is a big paragraph starting with the word "Finally," and I am directing your attention to what I believe is the last full sentence reading:

"As a result of these agreements ~~with~~ with the union and an amendment dated October 28, 1963, to the welfare agreement, and the agreement with Aeroquip, the corporation will also be relieved of all its obligations and liabilities for pensions and various contingent severance pay provisions, which according to the provisions of its pre-existing agreements with the union could become quite burdensome to the corporation."

I ask if that agreement referred to of October 28, 1963, is the memorandum of understanding regarding the employee welfare benefits programs of the Republic Rubber Division and is Document 3 in evidence, and if this is that document referred to in the proxy statement.

A Yes, that's the one.

Q You stated yesterday there was no problem with the Republic Rubber Division concerning the special distribution on discontinuance of operations because, I believe you said, there was no strike but there was no

problem therelike there was in ~~Conshocken~~ Conshohocken. You said something like that and there was no problem -- it was a continuation of the business, thath what you said, at Youngstown.

A If we would have discontinued permanently operations at Youngstown at the time instead of selling to Aeroquip we would have been subject to a special distribution because that would have happened during the existence of the welfare agreement. But since the new purchaser took over all our obligations there was no problem.

Q How was that different from the situation at Conshohocken at the same time?

A We didnt have a buyer at Conshohocken to take over our obligations.

Q How could bhere be a discontinuance of operations in Youngstown in November 1963 and none in Conshohocken?

A There wasn't any. I didn't say there was a discontinuance of operations. I said if we had had discontinued permanently operation in Youngsbown or Conshohocken we would have been subject to the special distribution payment, if that would have happened before the expiration of the welfare agteement.

Q And one of the purposes certainly of this ~~particulrar~~ particular memorandum of understanding was to get the union

to agree that the sale would not be deemed in any way to be a discontinuance of operations?

A Not only that. This covered various other things. This covered medical pension, and all the things under the welfare agreement.

Q There were several different documents concerning the labor agreement. I am referring only to this particular one.

A Then let me read it to see what this particular one refers to. I thought you were referring to all.

Q You can refer to all, but I am only asking you about paragraph 2 of Document 3. I am asking if that proxy statement is that agreement.

A Yes. I want it clearly understood a change of ownership from one party to another is not equivalent to discontinuance of operation. That simply is what we said there. The union could have said you discontinued and another man continued; that's it.

Q We have some testimony in this case that this was not necessary because it could in no way be deemed to be a discontinuance of operations, but you felt so?

A No other union could have come up. We wanted to make it very clear that that is what it meant.

Q So it was very much on your mind, that's the

point.

A Lawyers told us. You always listen to lawyers. Lawyers told us that you have to have it.

THE COURT: Very good advice.

Q The same document --

A Those documents were written by attorneys.

Q I hope so.

Referring to the same document, page 8, paragraph 12,"Price range of the corporation stock gives a history commencing in the fourth quarter of 1961" -- and then gives the average high and low prices of the stock from that time.

To what would you attribute the fact that commencing with the third quarter, if you will look, in 1962, which is approximately when you took control of the company, the high of the stock fell by 5 points?

A Between what and what?

Q I am referring now to the third quarter 1962, the high and the low is 16-3/8 against 14-1/4. The previous quarter, second quarter '62, high 21 and three-quarters and the low was 13 and a half.

A Right.

Q The same price action followed in the fourth quarter of '62, when you were just taking over as chairman

of the company?

A Yes.

Q That was a publicized event, wasn't it, your becoming chairman of the company?

A I guess so.

Q The company was listed on the New York Stock Exchange at the time?

A Yes.

THE COURT: What is your question?

Q If you follow down, the sale of the Republic Division was announced when?

A I guess in November, when it happened. I don't know.

Q The agreements are dated October 31st, and the negotiations obviously had been going on quite seriously before then. We would assume then the company made announcement at least simultaneously with the signing of the agreements.

A I guess so. That would be normal. I don't remember. I would expect that some announcemnt was made in and about that time.

MR.MOSS: At the time of the closing, I would think.

Q The strike at both plants, Conshohocken and

Youngstown, occurred at the beginning of the third quarter of 1963; isn't that correct? And yet the price action of the stock remained the same. Yet two or three months later when you annunced the sale of the Republic Division we notice that the stock goes up quite a bit to the month of November 1 to November 22, 1963, to a low of 19 and a quarter and a high of 24.

Was it your impression that the investing public approved of your sale of the Republic Rubber Division?

A You can't say much, because as you can see the closing price went down to 20 and a quarter. In other words, the price closed at 20 and a quarter, and it has been about the same in the first quarter, twenty and three eighths, and the second quarter even more. I don't see much differential in the price of the stock.

MR. TAYLOR: Your Honor, forgive me. Sheer conjecture, but I remembered -- I just wonder -- and if anyone can bear me out -- wasn't President Kennedy assassinated November 22, 1963? It was the 22nd of either October or November.

MR. MOSS: I am sure President Kennedy had nothing whatever to do with what went on at the ~~Conshohoken~~ Conshohocken plant.

THE COURT: President Kennedy's death might have

affected the price of the stock.

MR. TAYLOR: There was a twenty point fall in the market.

THE WITNESS: If the market reacted favorably there is nothing I can do about how the investing public thinks or interprets the fact you have sold a division that is not very profitable. That is a fact, anyhow.

THE COURT: I don't know why we are speculating when the public announcement was made. It says right here made October 31, 1962.

MR. TAYLOR: I accept it.

A I don't see it has much influence on the movement of the stock in October.

Q Keeping this page open, pick your covering letter to shareholders up, Exhibit 61-A. Generally speaking, you were quite concerned with getting stockholder approval of the sale, weren't you?

A No, I wasn't concerned because I expected it was going to be favorably accepted by the stockholders. They knew that the return on the investment of the division was small.

Q This is quite an imploring letter, isn't it?

A Not an imploring letter. I don't see where you say it is imploring.

Q You specifically stated --

THE COURT: What is this?

MR. TAYLOR: The covering letter to the proxy statement signed by Mr. Clairmont, and also Mr. Garthwaite, Jr., as president of the company.

Q The next to bottom paragraph:

"We would like to inform you that we have been advised by stockholders owning about 304,800 shares, or 38.8 per cent of the company's stock, which include our largest stockholders, that they are entirely in favor of this transaction and intend to vote their approval thereof."

Wasn't that you and your group that owned 38.8 per cent of the company at that time?

A I don't know how much we owned, but it may have been our group plus other large stockholders who had expressed themselves in favor. But it was a question of fact that we communicated to the stockholders.

Q Part of your group was Mornay Corporation, wasn't it?

A Yes.

Q You originally acquired your stock both directly and indirectly through your partial ownership of Mornay Corporation?

A That's right.

Q Who were the other individual members of the group, other than yourself and Mornay? Were there other members of your group, that you considered your group?

A Yes, there was a company called ~~Darfaina~~ Darfina, S.A., and -

Q Any others?

A Yes. There was a company called, I think, Matignon. These were the largest stockholders.

Q So that --

A Of course we had another large stockholder by the name of Kaplan, who was a very large stockholder.

Q Was he a part of your group?

A No.

Q I was asking part of your group.

THE COURT: Is that the grape juice man?

THE WITNESS: Yes. Who owned a very substantial amount. Probably more than I had.

Q I thought his name was Levine. But that is the gentleman who purchased Mr. Herman Kahn's interest in the corporation, wasn't it?

A I don't know whose interest. No, Herman Kahn didnt have by far that amount of stock.

Q But he might have been the same person who

purchased whatever Herman Kahn did own?

A Maybe.

Q But the inside group, the control group, owned 38.8 per cent, and that is you and your associates?

A I don't know whether the 38.8 per cent included only our group or also other large stockholders.

Q Let's come back to page 8.

The strike began in the middle of July 1963, so we have to look at the third quarter of 1963.

MR. MOSS: Thestrike where?

MR. TAYLOR: The strike at Conshohocken began on July 16, 1963, which follows within the third quarter of that year. As a matter of fact, the strike at Youngstown started August 6, 1963, sothat is also in the third part, or third quarter, of the year. So while the company was completely strikebound and shut down this is what the trading action was during the third quarter of 1963.

THE WITNESS: It is about the same like the second. From what I can seehere, the action of the stock is about the same in the second and third quarters.

Q Mr. Clairmont, from the time you acquired your stock ownership, and I am nowspeaking about you personally, in the summer of 1962, and became chairman of the board,

did you thereafter continue to make purchases of the company's stock?

A We did make some purchases after that.

Q You were also a recipient or partial recipient at least of the stock of the employee stock option plan?

A Yes.

Q But for cash consideration either through private purchases or open market transactions you did purchase company stock?

A Whether I did not not? Yes, we did purchase after I became chairman some more stock.

Q Can you give us an idea of what your group's percentage holdings were when you became chairman?

A I think it must have been -- again, I may be off, but I think it was about 30 per cent, if I am not mistaken.

Q There is some document which does refer to that financial statement. As a matter of fact, the 1962 financial statement, if I remember correctly --

MR. MOSS: To make sure the record is straight, I believe Mr. Taylor said when he became chairman in the summer of 1962, and he became chairman in September of 1962.

THE WITNESS: Whenever it was.

THE COURT: Indian summer.

MR. TAYLOR: I said acquired his position by the summer and became chairman immediately thereafter.

MR. MOSS: As long as it is straight on the record.

Q You were purchasing stock intermittently throughout?

A I wouldn't remember, but I know we were buying it from time to time.

Q When did you stop buying stock? Did you ever stop buying?

A Sure, at some point.

Q Doyou remember when?

A No.

Q But whatever you had purchased you held for investment, I take it?

A Yes.

Q You ultimately sold out in 1968. Therefore it would be all of your holdings that were sold in 1968?

A I think part in 1968 and part in 1969. I know I sold in two different years in different quantities.

Q Did you sell them to people who are now in control of Lee National?

A That's right.

Q On the eve of the strike, which according to Mr.

Garthwaite's interim financial report which we just looked at, 86-A, which showed a fairly calamitous situation in the company which was, as he stated, the result --

THE COURT: Ask him questions. Don't make lectures to him.

MR. TAYLOR: I am, but I am addressing him to the point.

Q -- which was stated as a result of this comprehensive study that you had underway from October, or thereabouts, to January of 1963, roughly, to this time, you then purchased stockyourself, didn't you?

A Yes, I purchased some. I think my associates purchased some.

Q Very specifically, between June 13th and June 25th, 1963, you purchased some 18 to 20 thousand shares of the common stock of the company that one month alone?

A If that's what is reported then I bought that.

Q Did you purchase more stock in August 1963?

A I wouldn't know. I cannot remember all my purchases ten years ago what I purchased every month and how much. That's all in the reports to the SEC.

Q But generally then, without specifying, you were purchasing in 1963?

A I guess so, if it is in the reports.

Q With regard to the work rules, and for frame of reference the work rules imposed July 16, 1963, you testified, I believe it was yesterday, that you found it cheaper toproduce tires outside the plant, specifically with Mohawk and U. S. Rubber,than to produce them yourself at Conshohocken?

A On the ~~bases~~ basis that we were producing them.

Q On that ~~bases~~ basis, why would you ever open or want to reopen the Conshohocken plant?

A We did not intend to reopen the Conshohocken plant to continue to lose money. We wanted to reopen it under new costs for productivity. Otherwise, we could have given into the union, stopped the strike, and started manufacturing again.

Q July 5, 1963, did Mr. Garber as chief negotiator for the union at that time offer to you and the company negotiating committee a wage proposal specifically going along on your productivity sharing proposal, without a wage cut, and a job evaluation and incentive program very similar to what you were asking?

A I would like to see that. I don't recollect any of that. I would like to refresh my memory by seeing that. I do not recollect having been offered a job evaluation, but I would like to see it before I can testify.

MR. TAYLOR: Your Honor, we have a problem. This is the document that Mr. Garber -- these are Mr. Garber's notes, but we did not enter them in evidence because he testified to them orally, and we felt no need to encumber the record.

THE COURT: You can show them to the witness for the purpose of refreshing his recollection.

MR. TAYLOR: I will show them to Mr. Moss first.

THE COURT: You can show anything to a witness for the purpose of refreshing his recollection.

THE WITNESS: I do not remember any such proposal, but I think if it was made it would have been rejected because they wanted us to participate only if the cost is over 15 cents, and if it is lower than 15 cents we should pay them back 75 per cent of that, which would be a pittance for us of the cost of productivity.

It was practically giving them back all the savings, so I am sure if it would have -- I don't remember it, but if it would have been made I guess it would have been rejected.

Q Essentially, this was a proposal using the 15.2 cents per pound cost of labor, which is acceptable --

THE COURT: Wait a minute. One at a time.

MR. TAYLOR: Forgive me.

Q -- and the union did offer a wage cut after one year --

A No, no wage cut. No, they didn't offer any wage cut in this proposal.

THE COURT: The proposal you just read?

THE WITNESS: That doesn't say anything about it.

THE COURT: May I read it, or let it be offered in evidence.

MR. MOSS: Your Honor, I object to all of this testimony now. The witness has said he doesn't know anything about this offer having been made. It is not necessary for him to speculate as to what would have happened if it had been made. Maybe somone else here, Mr. Heinrich or somebody, remembers it being made.

THE COURT: He can say what would have been done.

THE WITNESS: I would like to say with most proposals we were very much guided by lawyers. All proposals made by us were made always in writing. Any counterproposal from the union they were serious about we would have asked also be made in writing, because that's the only way you can establish a record if you go before the National Labor Relations Board to show actually you did

it. So that any proposal that a party was committed or ready to be committed to would have been made in writing. We were very formalistic about all of these things. So the fact that there is no written proposal from the union makes me doubt that that was a real bona fide proposal to be implemented or made to be implemented by the union, but I can't -- I don't see at any place they talk about a wage reduction. They only say the present contract and all agreements as they are to be extended for one year.

In other words, do nothing for one year. At the end of one year the company and the union would evaluate the total production, and the total wages, plus fringes paid from July 15, 1963 to July 1964. The variation shall include and exclude items respectively that either included or excluded in the evaluation made by Barboo for Strong-Narovec.

I don't even understand what the sentence means.

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Q They are using the same criteria,I believe is what the thing means.

A I don't know. It's so mumbo-jumbo to me.

Q Paragraph 3--

THE COURT: I think his objection is well-taken. He doesn't remember this.

A It says, "If the cost per pound of material produced exceeds 15 cents"--first it was 16 and then it was--

Q 15.2.

A --"15.2, the union will accept for the ensuing year."

This is absolutely ~~assinine~~ assinine. because 15.2 does not include material; it includes only cost of labor.

If you let material come to a completely different cost--I mean, all of this doesn't make a bit of sense because when we are talking about 15.2 we are talking cost of labor, not material. Material itself may be 30 cents, or 40 cents.

Q But the subject--

A So the whole thing here is absolutely meaningless.

Q The subject was the cost of labor.

A But it says, "If the cost per pound of material produced..." Material had nothing to do with our discussion. Material is what you pay for synthetic rubber, for the

ingredients, and so forth. I don't see any rhyme or reason for this.

THE COURT: I think we are getting far afield. He says he doesn't remember.

Q But that proposal does say that the union--

A And then it says--

Q Does it state that the union would accept a wage decrease across the board?

A No. It will accept for the ensuing year an across-the board wage decrease by the percentage that the cost exceeds 15.2; in other words, if it goes above 15.2--they were talking if it goes above 15.2--they are saying if it goes from 15.2 down to 7; and they say if it goes above 15.2--

Q And that there will be a sharing if the cost goes below?

A It was like talking to children that were one-year old. It shows the lack of seriousness--

THE COURT: All right, you made your point. You didn't like it.

Q Do you recall that Mr. Garber presented to the company, on or about July 12th, an overall--in fact, at the request of the company's arbitrator--not arbitrator but the negotiators who said they had, at that time, to report to the board of directors, the summary analysis of what is going on in the situation at the time, and they asked the union

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to give them their last proposal, so do you recall having seen, read, or discussed an overall settlement proposal produced by Mr. Garber and the union committee on July 12th?

THE COURT: Are you talking about a document in evidence?

MR. TAYLOR: No, your Honor; just proposals.

THE COURT: The witness has said that he didn't consider any proposals unless they were in writing.

THE WITNESS: Was it in writing?

MR. TAYLOR: They were the subject, your Honor, of the negotiation meetings for that date, for which we have minutes, and at which a federal mediator was present.

THE COURT: He said he only considered proposals in writing.

THE WITNESS: I was not a member of the negotiating committee, so whatever was said back and forth during those sessions I would not--

Q But they reported them to you?

A If it was a proposal made by the union, surely it would have been reported to me.

Q Were you told, among other things, that the union offered to reduce their demands from 100% off standards to 95%?

A I don't remember that, but if it would have been

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in writing, something communicated by the union, we would have it in our records and I could refer to it.

Q Do you recall that they proposed a pension plan funding the change from minimum funding to terminal funding as an aid to reducing the annual cost of the funding to the company?

A That would not have reduced the cost. Besides, that was part of the welfare agreement. We were not even negotiating, at that time, the welfare agreement.

Q But your interest was in saving cash flow, wasn't it?

A We didn't need cash. That would have been helpful to a company that wanted to meet a payroll. We had all the money to pay for the funding.

Q Unless it came off profits and losses?

A It still had to come from somewhere, from capital. In our case we were paying it from capital.

Q Do you recall that the union proposed to come to some form of agreement with you concerning recall rights of laid-off employees which at that time had been very, very substantial, and they were going to reduce it to a two or three year basis beyond which there were no recall rights?

A It's impossible for me--not only difficult for me--to know all the discussions.

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When a party was ready to make a counter-proposal or a concession, it was put in writing and presented to the other party to approve or to disapprove it, so what with all the talk back and forth, which was not eventually materialized in a proposal, I wouldn't know about.

Q Do you recall the concession by the union offering to accept a company proposal on productivity sharing using 12.5 cents per pound as the basis and having a 50% sharing in the reduction of the cost?

A No. That I don't remember at all.

Q However, without a wage cut.

A I do not remember that at all, any of them accepting any kind--they flatly rejected both of our proposals without coming in with any counter-proposal as to producitivity.

Q Do you recall that the union offered a co-terminus date of the collective bargaining agreement with this welfare agreement by extending this new collective bargaining agreement by one year so that both agreements would then coincide?

A That was not one or the same thing. They didn't do that as a matter of principle. They said to extend this and then both will expire at the same time.

We wanted it as a matter of principle. Any time a working agreement would be made, it should expire at the

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same time as the welfare.

The welfare expired in '64, and they said extend this one and until this will happen to expire at the same time.

That was asking for an extension of one year of the existing agreement, and by the mere fact of the dates they would have coincided.

Q Well, if you could have arranged a co-termination date in August or September or 1964, wouldn't that have been satisfactory to your demands?

A No, because the welfare agreement was still running in '64.

Q And you wanted the co-terminus date to be approximately August or September of 1963; isn't that correct?

A When we discussed, at the beginning, we wanted the co-terminus to be made in '63 instead of '64 so that the welfare agreement should expire at the same time as the working agreement in '63 and not be in '64.

Q And you just testified, did you not, that in 1963, July, you were anticipating the real possibility of a strike?

A In 1963?

Q Yes.

A No. I was not anticipating. I said it was a possibility. As long as there is a possibility, at the

expiration of any contract, that the parties may not agree, there could be a strike.

Q So that if you had co-termination in the summer of 1963, and there just happened to have been a strike at that time, the company would not have had any problem with contingent liability or liabilities for severance pay, pensions, accident and health, insurance, or anything else?

A That's right.

THE COURT: That is what he said. He said it yesterday, he said it today, and that's why he wanted the co-termination. Why do you think that you will get anything different by repeating it over and over again?

MR. TAYLOR: In 1963.

THE COURT: That's what he said yesterday in his speech.

MR. TAYLOR: I am finished with the point, your Honor.

THE COURT: You must think you have a dull judge. Maybe you do.

MR. TAYLOR: No, no.

Q Now, you have also testified, previously, that the situation in Youngstown was different because while it was not a losing proposition, a losing operation essentially, there were minimal profits?

A Yes.

Q There is no doubt, is there, that Republic Rubber Division was a problem for the company, wasn't it?

A Well, what do you want me to answer? Yes or no?

Q Yes, yes or no. Was it a problem for the company?

A It was a problem like every other operation when the company doesn't get a proper return. We were making 1% on turnover.

We were selling $10,000,000 and making $100,000. To that extent it was a problem, but it was not a problem of life and death like the other one where you are losing $3,000,000 a year. You can live with a $100,000 profit. If you are not profitable, you hope to make every year a little better, but it wasn't a problem--you can't compare the contents of the two problems of the two divisions.

Q Did the Republic Rubber Division have a sales and distribution problem?

A By far not like the other one.

Q But it did have a problem along those lines?

A There is always room for improvement especially when you come from a management like we had before. There is room for constant improvement.

Q Yes, but in the proxy statement--

A For instance, if you want me to tell you one of

the problems that we had in sales, we had many accounts on a consignment basis. We used to sell them goods, they were our goods, they stayed there for six months or a year. If the man sold them he will account for them to us. We wanted to get out of this consignment business. We wanted it to be a fixed sale. They made all kinds of concessions to keep on a consignment basis instead of a fixed sale, and there were all kinds of other things, but company always try to improve.

Q It may be a case of improvement but in the proxy statement which you signed concerning the sale of the Republic Rubber Division you specifically described the conditions of the Republic Rubber Division sales as a reason for wanting to undertake the sale to Aeroquip.

A Let me put it this way: It was not a desirable operation but it was an operation that one could live with.

Q Now, did you or did the company negotiating committee at Youngstown, under your aegis as chairman, make certain company proposals to Local 102 during the same period of time that we are dealing with in Conshohocken?

A That's right, but without any wage decrease.

Q Did you originally ask for a 50 cent an hour wage decrease across the board?

A Yes, because we found out that our average was--

I remember these figures correctly, 291, I think, and the national average for all other industrial rubber manufacturers, also part of this unit, was 251, and we presented them with that, Why should we pay 40 or 50 cents more than everybody across the nation?

Q Did you also ask--

A Which included U.S. Rubber and Goodrich, which were very profitable competitors.

Q Did you also ask and insist on the 7 1/2 cent decrease in the incentive rates?

A We did not ask them for any wage reduction but we wanted to tighten up some of the incentive rates for them to produce 7 1/2% more.

We have to leave it at 291 and if you don't give us an increase, at least do something for us, and we wanted to tighten the rates by 7 1/2% but without cutting wages.

Q Well, now, you say--

A In other words, we didn't propose any wage reductions in Republic--

THE COURT: I thought you said you asked for it to be brought down to the level of the other--

THE WITNESS: At the beginning, but then we gave that up and said No; we will let you stay all the same.

At the beginning we tried, but we saw that the

reception was very antagonistic so we gave that up and we said Let's tighten up a little of the rates on the incentives.

Q Forgive me if I refer back to the colloquialism of sorts, but in your testimony yesterday you said that you regarded the union leadership of Local 102 as being more enlightened than that of the Conshohocken leadership, and that you felt that the union leadership of Conshohocken contaminated the minds of the Youngstown union group.

A Because their answers and the whole atmosphere of talk was one that was much more geared to economic facts of life than emotionalism.

I found them to be responsive when I had a good argument. They would accept it. They wouldn't just sweep it off the table like I found the case to be in Conshohocken. There was less prejudice. Let me put it that way.

Q Are you aware of the fact that the company negotiating committee made a proposal on Friday, July 5, 1963 to Local 102, five typewritten pages comprising nineteen items--that is 111-A in evidence, and rather than go through it in detail I am just going to signify the headings of what was requested by the company, and the preamble which I will read:

"Republic Rubber Proposals. To be considered as a whole that will improve the competitive position of the

company. This proposal submitted on Friday, July 5, 1963, Item No. 1. Key jobs. Sixteen items.

THE COURT: I can see this thing. Now, why do you want to ask him about it? You don't have to read everything.

MR. TAYLOR: I wasn't going to read it. Only the first two items, and then running on to the subjects, but we needn't really do that.

Q These were fairly stringent proposals, weren't they?

A If they were so stringent they would not have accepted them.

Q They accepted these?

A Yes.

Q When did they accept them?

A When we had to negotiate with Aeroquip Division, they accepted them, and because maybe they wouldn't want to say that they accepted them in order not to show that they gave in to us so they said it was all right for 60 days, but Mr. Hurd, the chairman, was going with me through all of these proposals and wanted to buy the plant only if the union will go along with these proposals, and the union knew that, and after 60 days the union accepted exactly the same provisions, or almost all of them in the contract with Aeroquip. It was only a question of not only giving in to Clairmont

but also to save face they made the arrangement for 60 days only because they knew that in 60 days there would be new owners and they would obtain exactly what they gave in to me--I mean, to our demands.

Q To the best of your knowledge--

A Yes, to the best of my knowledge, because I know Mr. Hurd, chairman of Aeroquip, went with me all over this and said he would buy the plant if they would go along with this, and the union knew that but they didn't want to lose face by saying that they gave in to Clairmont, so they made the provision for 60 days; in other words, that was something only symbolic, but it was the same agreement that they made with us plus 60 days, and was directly, or almost 90% of it was inherited and made with Aeroquip, with the new owners.

Q But this was to facilitate the sale; you couldn't sell without the union's approval.

THE COURT: That's what he just said.

A Yes. And they were very minute because there was no wage cut. And the job evaluation, they were not so much opposed to it.

Q You are aware, aren't you, that the company installed work rules, fairly stringent work rules, in Youngstown effective at 6:15 A.M. ON July 18, 1963?

A We applied the same provisions in Youngstown as we did there.

Q Except for slightly different proposals and rules, it was pretty much the same thing at the same time.

A Whatever they were.

Q O.K. Now, you must be aware, with regard to Youngstown, that there were certain grievances filed prior to the strike--I believe 22 such grievances--are you aware of that?

A I knew there were some grievances filed.

Q One was filed under the 60-day agreement for a total of about 23 that had not been settled or disposed of in some fashion?

A There were always some grievances.

Q Do you recall who the attorneys were who represented Lee National at Youngstown?

A I don't remember the name of the attorneys but I remember the name of Mr. Lamar Jackson which I think handled most of our affairs. I think he may have been senior member of the firm.

Q He represented Lee National?

A Because my contacts were mostly with Mr. Lamar Jackson.

Q Was he your personal attorney or attorney for

Lee National?

A I had no reason to have a personal attorney.

Q He was company counsel for affairs at Republic Rubber Division?

A Yes.

Q Prior to the strike?

A Yes.

Q Was he also the attorney for Lee National after the strike ended?

A Yes, he was, unless we sold--

Q Until you sold?

A Until we sold Lee, in other words.

Q Did Mr. Lamar Jackson cease acting as attorney for Lee National or Lee Rubber and Tire, whatever the name of the company was at the time, on or about December 1963 which was the day of the transfer of the transaction of the transfer to Aeroquip?

A I think he did because there was no more business but I remember there was some compensation cases which were held by some other member of the firm, I don't think by Mr. Jackson, and of course they had all the files and all th e records about this compensation, workmen's compensation cases, and of course there was no use to change the attorneys at that time, and we let them continue handling that.

Q Are you familiar and do you remember Lowell E. Young?

A Yes.

Q And he was the personnel manager of the Youngstown plant?

A Yes.

Q He went with Aeroquip on the sale, did he?

A That I don't know.

Q You have no knowledge of that?

A I don't know whether they kept him on the payroll or not, or if they changed--

Q Who handled, for Lee National, the subject of the grievances and any outstanding problems after the transfer to Aeroquip in December 1963?

A Who handled that?

Q Did Mr. Jackson's firm handle that?

A There were no more grievances. Aeroquip had to handle them because they took over everything, all our obligations, and everything else.

Q Lee National did not continue to negotiate the settlement of those grievances, or arbitrations, or any other claims arising therefrom?

A I don't think so.

Q You don't remember, though?

A I would assume that they did. We were through there.

Q Did you ever authorize, particularly early in 1964, Mr. Lamar Jackson to settle the outstanding grievances to get rid of the issues at 50% of their agreed value?

A If maybe somebody will recall for me. They were not of enough importance for me to handle. Maybe Mr. Heinrich or somebody else from the company did that, but I wouldn't know. I don't remember, frankly, whether I did or not.

THE COURT: This is in 1964 that he is asking you about.

THE WITNESS: Yes. I know that all of these things didn't amount to too much. They may have been a matter of 15 or $20,000. It wasn't too consequential, and I really do not remember how it was handled and by whom.

Q You don't recall, then, whether Mr. Young, Lowell Young, that is, continued for the limited purpose of handling these grievances, to represent Lee National?

A No, I wouldn't know about that.

Q After the sale?

A No, I wouldn't know about that.

MR. TAYLOR: No further questions, your Honor.

THE COURT: Do you want to ask any further questions, Mr. Moss?

MR. MOSS: I would really rather wait, your Honor.

As I said this morning, I think I would be better prepared to deal with all questions the first of next week rather than to start now and just work for an hour or so. If your Honor doesn't mind, I would prefer to do it that way.

THE COURT: All right, then, gentlemen, we will reconvene tomorrow then, at 10 o'clock.

(Adjourned to Friday, February 23, 1973 at 10:00 o'clock a.m.)

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United Rubber, Cork, etc.
v.
Lee National Corporation

February 23, 1973,
10 A.M.

(Trial resumed.)

THE COURT: Good morning, gentlemen.

MR. AUERBACH: I would like to call Mr. Hess back.

Your Honor, just so that I do not do anything contemptuous, you had told me, in examining Mr. Clairmont, not to go on any more about the tread tuber. I assume you only meant that with regard to Mr. Clairmont?

THE COURT: You established he did not know about it. I do not know what else you want to make of that knowledge. You are not precluded from doing it.

MR. AUERBACH: Okay.

Mr. Hess.

C H A R L E S T. H E S S, Jr., recalled as a witness on behalf of the plaintiffs, having been previously sworn, testified as follows:

THE COURT: You are still under oath, Mr. Hess.

DIRECT EXAMINATION

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BY MR. AUERBACH:

Q Mr. Hess, you heard Mr. Clairmont's testimony the last two days?

A Yes.

Q Let us first get to the question of time study. Did the company have time study men on the premises after Mr. Clairmont took over?

A Yes, they did. They had an industrial engineering department manned by two time study engineers.

Q What were their names?

A Bill Rudderow and Fred Klotzback.

THE COURT: Did you mean to suggest by that question that they had been there before?

MR. AUERBACH: No.

THE COURT: The question suggests just the opposite. Bring it out with the witness.

Q Had the time study men been there before Mr. Clairmont?

A Yes, they had.

Q The industrial engineering department continued after Mr. Clairmont took over?

A Yes.

Q Did they remain there all the time until the strike?

A Yes.

Q Were they full-time men, to the best of your knowledge?

A Yes, they were. Yes.

Q Was it the practice in the plant that when any element of the job was changed that the company and the union recognized whether the company had a right to re-evalue the job?

A Yes. When any element changed in any job, the company had the right to go in and reevaluate it or re-time study the job.

Q Was that subject to grievance?

A It was subject to grievance procedure and arbitration, yes.

THE COURT: What do you mean by change in the element of the job?

THE WITNESS: Take tire building, for instance. It might have 50 elements to build a tire, and they might decide to eliminate one or two elements. By doing this --

THE COURT: Tell me what an element is. Just assume I do not know anything, and you are quite correct.

THE WITNESS: To build a tire you put one ply on, another ply on, and then you put your beads on. They might eliminate -- a four-ply tire, they might eliminate

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two plies. Then they can re-time study, take the time out for eliminating the two ply.

Q Would another word for element be an operation?

A Yes, yes.

Q Did this continue to go on during all of the-- we will call it -- Clairmont period?

A Yes.

Q How many jobs was this done on? Not the exact number, but was it few, many?

A This was gotten out on many jobs. Each and every time they made a change, the time study engineers would go in and check it over.

THE COURT: Do you happen to remember any particular change, illustrative, that was made during the Clairmont period?

THE WITNESS: During the Clairmont period? Not offhand, I can't remember it. I can't remember whether the new machines had rates -- we had -- I'll tell you. Our truck tire machines, they were new truck tires and they were under the experimental stage when Clairmont took over, and they were being checked by the time study engineers at the time, but they never did come up with a rate time at the time of the work stoppage.

Q Did the union ever tell the company that it could

not change an element in a job?

A No, we couldn't do that. The company has that right.

THE COURT: You could call a grievance if you did not like the way they changed?

THE WITNESS: No, if they made a change in the job we, as the union, have a right to protest to a grievance procedure and have it checked by our time study men and go to a grievance procedure and arbitrate if we felt we were right.

Q My question, Mr. Hess, was this: forgetting what they did with the rate of the job or the incentive, did the company have the right to make a change in the job subject to arbitration as to what the job should pay?

A If they changed the job in any way, they had that right, yes.

Q Did they have the right to make the change?

A Yes.

Q Did they have that right with regard to every job in the plant?

A Yes.

THE COURT: If there was a change in the element of the job?

THE WITNESS: Yes, or a change in method. It could

be --

THE COURT: A change in manufacturing method?

THE WITNESS: Yes.

Q Did the company have the right to make the change in methods?

A Yes.

Q Subject only to your right to grieve the rates?

A To grieve the rates.

Q Or the standards?

A Right.

Q Or the incentives?

A Yes.

THE COURT: As I remember, Mr. Clairmont said there was nothing wrong with the methods and they had no occasion to change the methods.

MR. AUERBACH: Well, I understand that, but he also testified that they did not have any time study people.

THE COURT: No, he said there were a couple but he did not think they did much.

MR. AUERBACH: All right.

Q In point of fact -- I do not know whether I asked this -- were there many changes in the elements in the Clairmont period?

A No, there ~~aren't~~ weren't that I can remember.

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Q Were there any changes in elements?

THE COURT: He said the truckmen. Any others?

A Not that I can remember, no.

Q Are you saying that there were not any --

THE COURT: He said there is none that he can remember. If you want to get him to change his testimony, go ahead. I think if you prepared the witnesses beforehand you would have less surprises.

Q Were there changes that you agreed to in the rates?

MR. MOSS: Your Honor, I object to this. This is Mr. Auerbach's own witness.

THE COURT: I sustain the objection.

This is your own witness. You asked him a question, if there were any changes, and he said no.

MR. AUERBACH: I think, your Honor, what you did ask him, if he remembers any changes, not whether there were.

THE COURT: How could he say there were if he does not remember them?

Did any happen that you do not remember? He is trying to get you to see if there were any changes. Now, think hard and see if you can come up with some.

THE WITNESS: Not that I can remember.

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Q Were there any grievances over any changes made during the Clairmont period?

MR. MOSS: I object to that, your Honor. He has just said he does not remember any changes.

THE COURT: Maybe he can remember arbitrations.

MR. MOSS: ~~THE COURT:~~ How could he remember grievances about changes which did not take place?

THE COURT: That may refresh his recollection.

MR. MOSS: I believe his testimony previously was, also, that during the Garthwaite period there were no arbitrations of any kind.

THE COURT: It was a long time since. He may be able to refresh his recollection.

A Do you want me to answer him?

Q No, just answer my question.

THE COURT: We have got enough problems with one lawyer.

Q Were there any grievances?

A Yes, we had grievances.

Q Over the changes in elements in the job?

A Yes, the time study engineers, they were taking time studies all along and we had grievances then.

Now, they would make certain little changes on machines and the time study engineers would come up and

time study them. But what changes they were I couldn't tell you offhand, but they were busy all the time making--taking time studies.

Q I am not now asking you what the grievances were or what the changes were, but were there grievances over changes?

A Yes.

Q Did any of those grievances get to arbitration?

A Prior to ~~Claimont~~ Clairmont's time?

Q No, after Clairmont.

A No, no.

Q Were there grievances during the Clairmont period?

A Yes.

Q Can you tell us, were there any that you did not grieve that you agreed to?

A Oh, yes. There's many that we agreed to. We have our own time study man trained by the union, and if the company's time study engineers would take a time study, we would automatically -- and there was a protest, we would send our time study man over and check it out. And if they told us the time study was correct, we agreed with it.

THE COURT: What he is trying to develop, during the Clairmont part of the administration, do you remember

any occasion when this happened, this process you have just described?

THE WITNESS: No, I can't.

THE COURT: Do you think it happened during that period?

THE WITNESS: I can't remember, I'll tell you.

THE COURT: Do you have any impression one way or another?

THE WITNESS: I know they were taking their time study checks and we had protests in, but in what particular job they were, I don't know.

Q During the Clairmont period, were there times when you had to wait around for material?

A Oh, yes. Yes, many times.

Q What happened when you had -- I do not mean you personally, I mean the union people there, the production people -- how often did that happen?

A Well, that happened many times. We would run out of stock or treads or beads and we would be waiting around, and if they assigned us to another job, we would be paid off standard rates and so forth. This happened on many occasions.

THE COURT: Did it happen more after Clairmont than before Clairmont?

THE WITNESS: Oh, yes, yes.

THE COURT: When during the Clairmont period did it happen?

THE WITNESS: It happened right after Clairmont came in due to the fact that he was laying off, and we didn't have the stock in the plant and so forth, and what they did have in, what we would use up, we would have to wait until they got other stock in in order to get the tires built and orders going.

Q Do you have any other down time?

A Yes.

THE COURT: I am sorry, I did not hear the question.

b3 MR. AUERBACH: Other down time.

THE COURT: What does that mean?

MR. AUERBACH: Down time is when equipment is not working and the men have to wait around.

THE COURT: When a guy is sitting down?

MR. AUERBACH: They are sitting down, but not because they are doing anything wrong.

THE COURT: I understand. I am just trying to figure out how the word came about.

A We had other down time. We had electrical delays and mechanical delays and so forth. Something would go wrong with the machine and we would be paid off standard for

that, too.

Q How often did that happen?

A Quite a bit. A tire ~~An entire~~ machine is a delicate piece of equipment --

Q ~~I remember~~ Remember, Mr. Hess.

Remember, Mr. Hess, I am talking about during the Clairmont period.

A This happens not only during the old days but during the Clairmont period, too, because you can't avoid something like this.

Q Just tell us how often it happens, Mr. Hess.

A Well, I could say there were two or three machines broke down every day, maybe more. I mean, you can't pin down how often a machine would break down or you'd have a malfunctioning machine. But it happens on many occasions.

Q On each of those occasions, you people got paid off standard, for doing nothing?

A They would usually assign us to sweep the floor or wash windows or something.

Q Non-production work?

A Non-production work. Then they would pay us off standard, yes.

Q Did this happen with a lot of people or a few people?

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A A lot of people. A lot of people.

Q Does this also apply to the shortage of material?

A Yes, yes.

Q Can you think of anything else which caused off standard pay?

A It could be anything which would pull you off your particular job, put you on another job. It could be many things. It could be if the ~~electrical~~ electrical power went off, you were pulled off your job. It could be many things.

Any time that you were pulled off your job for any reason whatsoever and assigned to other work, you received off standard payment.

Q All right. Now, you remember the meeting of May 29, 1963 --

MR. AUERBACH: Your Honor, I am referring to Exhibit 99A.

MR. MOSS: What number is it, Mr. Auerbach?

MR. AUERBACH: 99A.

MR. MOSS: Thank you.

MR. TAYLOR: And with particular reference, your Honor, to the last part of the second page.

THE COURT: Barkett?

MR. AUERBACH: Yes, sir.

Q Do you recall in substance, Mr. Hess --

THE COURT: Do you want to show him a copy?

MR. AUERBACH: Yes. Maybe I'd better.

Q Mr. Hess, would you take a moment to read the last part of the second page, and anything else that you want to, to refresh your recollection.

A Yes, I remember.

Q Now, you see the reference in there: "We know that treads is one of our biggest problems, but you people should only receive an allowance for the short tread, not the whole tire"? What is a short tread?

A A short tread -- a tread, number 1, is a piece of rubber that goes over the tire after the tire is built; and a short tread could run anywhere from a quarter of an inch to an inch short, which you would have to stretch and pull up to splice together. Or your treads could also run long, an inch, an inch and a half long, and you would have to hammer them down.

Q How is the tread supposed to come out? I mean, is it the normal thing for a tread to come out the right size?

A Yes. When you run a tread on a tire machine, it should go around the drum and splice.

Q By itself?

A Just splice and run your fingers out by itself, yes.

Q Who is the man who handles the tread? What is his job?

A Tire builder.

Q Tire builder. When a tread is short or long, how does that affect his timing --

A Usually --

Q -- production timing?

A Usually, when you run a tread on, it's up over the machine and slides down a chute, runs around a drum. Well, you just run that tire around and splice it out.

But if it -- the tread is short, you run it around, then you have to pull the tread back and stretch it up a half inch or three-quarters of an inch, and then splice it.

THE COURT: Can I ask you a question? It says here you people should only receive an allowance for short tread, not the whole tire. What do they mean by that? Just tell me what you meant by that.

THE WITNESS: What I cannot understand, what Barkett meant by it, what I believe he meant is, when you put a short tread on, you should only get allowance for that time. It only takes maybe -- if a tread is right, it only takes maybe a couple of seconds to run it on, see, but if it is short, it might take a lot longer, or double

the time in order to stretch and splice it out.

Now, the way he feels, you should only get an allowance for stretching it, but you could not actually break it down. If a time study engineer went out and you make maybe 150, 200 tires a day, and maybe 100 of those treads might be short and some of them might be long, I don't know how he could figure out time study or getting allowance for that.

So usually when they're short, we get the supervisor over, he checks them out. That's the rule, and he'll come over every so often and keep checking them. And if they're short, they would pay us allowance for that time.

We might have short treads for an hour, we might have it for three hours. Then we'll get allowance for three hours and then we can go back on standard.

Then there's a possibility we might be off standard pretty much the whole eight hours, see, but what he is saying is, if we get two short treads and maybe five the right size, we should only get paid for the two short ones. And you can't break it down.

THE COURT: What caused the short treads?

THE WITNESS: What causes the short treads? At that time it was the tread tuber.

THE COURT: Is that what we are talking about,

the tread tuber?

MR. AUERBACH: Yes.

Q You are talking about the old tread tuber?

A Yes. The old tread tuber.

Q Is it fair to say, Mr. Hess, or are you trying to say, that when you get knocked off stride by the short treads or the long treads, that it has an indirect effect on your timing and your sequence and your speed?

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A Yes, in order to build tires you must have rhythm. You must know what you are doing every second, because you're moving all the time. And if you get short treads you're going to break that rhythm and you're going to have to stretch and so forth, and it takes time, yes.

THE COURT: You have just thought this was an impractical suggestion that I just read to you, that Barkett was making?

THE WITNESS: Yes.

MR. AUERBACH: I just want to point out, your Honor, that the reason I brought this out was not for the impracticality of the suggestion, but for the fact that it was management who controlled the equipment, not the employees. And he himself was saying he got a lot of problems with that and that is part of the inefficient operation which the union could not control.

MR. MOSS: Who was saying all this?

THE COURT: Barkett. He was interpreting what Barkett said in this note.

Q Was there a new tread tuber around?

A Yes, there was.

Q Where was this new tread tuber?

A This new tread tuber was stored in a warehouse beneath our plant in Conshohocken.

Q When did it get there?

A It just got there the latter part of May, the beginning of June.

THE COURT: The latter part of what?

THE WITNESS: The latter part of May, beginning of June of 1962.

Q Where was it stored?

A Where was this?

Q Where was it stored?

A It was stored in a warehouse at Conshohocken, at the Lee Tire plant.

Q Did you yourself see it there?

A Yes, I did.

Q Do you remember when it was brought there?

A Yes.

Q I do not mean the exact date, but do you remember

it being brought there?

A Yes.

Q How long did it stay there, in the warehouse?

A It was in the warehouse until Goodyear took over the company and set it up.

Q Okay. Now, would you tell the court when it was set up? How long was this tread tuber?

THE COURT: How long was it?

MR. AUERBACH: How long it was, how far it extended.

A A tread tuber is a giant piece of equipment, and the length is about the length of a football field.

Q And its width?

A The width??

Q Approximately.

A I would say the width is from this stand over to where you are standing.

MR. AUERBACH: Could we say for the record about 20 feet, your Honor?

THE COURT: 20 feet?

MR. AUERBACH: I am not very expert at --

THE COURT: It is good enough.

Q Would you describe for us what the tread tuber does, all of the operations that a tread tuber does?

A Okay, I will try.

The tread tuber gets the rubber off the mills. We have mills where they mill the rubber on the mills.

THE COURT: What is a mill?

THE WITNESS: A mill is like a barrel goes around, chews up all the rubber and breaks it down, and then it goes over into the tread tuber and it comes out of the head of the tread tuber, shaped into a form of tire tread; and this goes through a cooling system, cools the tread, and then it goes through certain other operators, different, where they measure and cut the size of the treads and do everything until it is finally booked and taken to the tire builders.

Q These operations you are describing, are they all part of the tread tuber?

A Yes, they are.

Q Was this a twin tread tuber?

A Yes.

Q What was the kind of tread tuber that they had before?

A Single head.

Q Does twin mean it has a double capacity?

A This has double, yes.

Q This tread tuber, did you work on it after it

went into operation by Goodyear?

A Did I personally work on it?

Q Yes.

A Work on the tread tuber?

Q Yes.

A No, I didn't work on it.

Q Are you personally familiar with the work on a tread tuber in your capacity as the president of the local?

A Yes, I am.

Q How did its production compare with the other production?

A Oh, you produce a lot more treads and a lot quicker, and it can come off the tread tuber and go directly to the tire builders, and the tire builders could use the tread right up and without shrinkage or without stretching. And they got more production and so forth right down the line.

MR. MOSS: Your Honor, in the effort of saving time, the company is perfectly willing to concede that a tread tuber was ordered in the Garthwaite administration, and that it had not yet been into operation at the time of the strike. I do not see why any of this is relevant at all.

THE COURT: Well, it is relevant to his case to show that this was an important matter.

MR. MOSS: He showed that, hasn't he? Do we have to go through all of the operations of the tread tuber? He says it was a double thing and it got a lot more. Can't we sort of get on to something else?

THE COURT: That is relevant to his point.

MR. MOSS: His point is, it was ordered in the Garthwaite administration and not put in under the Clairmont administration.

THE COURT: The point is more important or persuasive or whatever if the thing is an operation than if it is just a coupling machine.

Proceed.

MR. AUERBACH: Yes. I wonder if the stenographer could give me the last question.

(Question and answer read.)

Q Was there anything else that you wanted to add?

A Yes. I could add, to give you an example of production on that, the tuber-- that was in with the old Lee -- the record amount of tires they produced at Lee was 7,000 tires, at the old Lee, and we were running out of treads all the time.

With this new tuber, Lee Tire and Rubber Company

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in ~~Conshohocken~~ Conshohocken at the present time is producing anywhere from 13 to 15 thousand tires per day, and we have plenty of treads.

THE COURT: Is it still called Lee Tire and Rubber Company in Conshohocken?

THE WITNESS: Yes, it is still Lee Tire and Rubber Company. It's a subsidiary of Goodyear.

MR. MOSS: Your Honor, it was first named Lee Rubber and Tire Company, now it is named Lee Tire and Rubber Company.

THE COURT: I do not know if this is material to this witness, but just to clarify my thinking, did they sell the plant and then Goodyear organized a subsidiary, or what happened?

MR. MOSS: Goodyear organized a subsidiary called Lee Tire and Rubber Company which leased the plant first and then bought it.

THE COURT: I see.

MR.MOSS: They reversed the names just to have a different corporate name.

THE COURT: So there is no corporate continuity between the defendant in this case and Goodyear?

b5 MR. MOSS: No, sir.

Q For our clarification, Mr. Hess, was there more

than one tube treader or was there only one tube treader?

A Only one tube treader.

THE COURT: You mean in the old regime or the new regime there is only one tube treader, but it is a different one?

THE WITNESS: Yes.

Q With the new machine, were the jobs on it different than under the old treader?

A Oh, yes. With the new tread tuber, everything is combined in one piece of equipment; with the old tread tuber you had one job here and a job in another part of the plant, a job upstairs and so forth, where now everything is right down the line, like an assembly line.

Q Under the contract, if the Clairmont administration had put in the new tread tuber, would they have had a right to set new rates and incentives on the different jobs because of different elements subject to grievance?

A Yes. That would give them every right to re-evaluate and re-time the whole job, yes, sir.

Q Was this one job or was it --

A Every job that would be connected with the tread tuber.

Q Does that mean feeding to the tread-- let us go back at the beginning.

A That goes from -- you have a mill man's job. It goes -- then you have an operator, an assistant operator, you have a guy that weighs the treads, balances and weighs, you have a guy that cements the ends of the tread. Then you have your slitter, and then you have your bookers, the guys that pick the trays off the conveyors and put it in the books.

You have a production serviceman who takes the treads away and delivers them to the storage area, and this is about it, that I can recall. There might be a few others.

Q Where do the tires go after they leave the tube treader?

A The production service employee would take the treads and sit it right into the storage area for certain sizes tires. Then the production serviceman from the tire room division would come out, pick up this load of treads and deliver it to the tire builders.

Q Would it affect the job after it left the tube treader? Would any jobs be affected other than the jobs you have mentioned?

A No.

Q Was there more waste or less waste of material with the new treader?

A With the new treader?

Q Yes.

A Less waste, less waste.

Q Can you tell us, first, why?

A Yes. With the old tread tuber they used to pick the treads through and the treads would never cool. The tire builders would get the treads and they would be warm.

THE COURT: The tire what?

A When you run the tread down over the conveyor onto the tire and you hold your hand, it has a tendency to stretch that tread, and if treads were over a certain length, you would have to throw it out, or if they were short maybe better than three-quarters of an inch, three-quarters of an inch or longer, you would have to throw the tread out.

They used to bring loads of treads in and we would have to send them back because we couldn't use them. We would only be allowed, I believe it was, three-quarters of an inch either way. If you used -- if a tread was shorter than three-quarters of an inch and you put it on, the tire would be a weak tire.

Q What does this machine do about the timing of the operators?

THE COURT: Which machine, the new or the old one?

Q The new one.

A The new one?

Q Yes. How did it affect the timing of the operators?

A Of the tire builders. When a tread comes out of the tuber, it goes through this cooling system, and when a tread comes off, finally comes off the tread line, the tread is cool, measured, right to the T, and when it gets to the tire builders, we don't have a problem. The treads are usually right to the T.

Q How does it control the size? I mean --

A The size of the tread?

Q Yes.

A This is done by the operator. You had different dies that you put into the head of the tuber for different sized treads and all. They might run so many treads, like for 750 x 15 tires, then they might run so many 750 x 14s.

Q What caused, in the old tuber, the tires to be short, too short or too long?

MR. MOSS: Your Honor, I object to all of this. Need we know all about this manufacturing report?

THE COURT: Yes. The chairman of the board said he did not have any knowledge of this tread tuber. Therefore, it becomes important to know whether this is an important factor or not.

MR. MOSS: I gather he has already said it

increased the efficiency of the operation, changed the job, did a lot of things.

THE COURT: Unless you want to concede that the chairman was ~~derelect~~ derelict in not knowing about it. I do not suppose you want to make that concession.

MR. MOSS: I have proof which is going to make all of this testimony absolutely irrelevant. But to go into the mechanics of rubber making so we can all be tire makers seems to be unnecessary.

THE COURT: I am permitting you to establish the importance of this to the thing, but do not go too far.

MR. AUERBACH: All right, your Honor.

Since the whole essence, your Honor --

THE COURT: I really do not want to know how to make a tire. He has a point there. But you can establish the importance of this to your operation.

MR. AUERBACH: Yes. I do not know whether the witness answered the last question, your Honor.

(Question read)

A All right. The old tuber was a short tuber, and when the tires come through it might have went through about six foot of water, and when it comes through the water, the tread is still hot by the time it's booked and so forth, and the tread would either be too soft and too long or it

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would shrink when it gets cooled.

With the difference between that tread tuber and the new tread tuber, you had long conveyors and they were about four high. The tread runs through this water about four high before it finally gets upstairs and is cut. And the tread is actually cooled when it's measured and cut and to size, and there won't be any shrinkage or any stretching on it.

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Q Were these problems eliminated by the new tread tuber?

A Yes.

Q Did this problem, that you are talking about, affect the quality on the old tread tuber, affect the quality of the tire?

A Oh, yes, because each time you stretch a tread, you're stretching it, the tread becomes weaker. That tread might be an eighth of an inch thick, but if you stretch it, it can go down to maybe a 16th, and it would be weaker. Yes, the quality would not be there.

Q But these tires were sent out?

A Yes.

MR. AUERBACH: I have no more of Mr. Hess.

MR. MOSS: I have no cross examination.

(Witness excused)

MR. AUERBACH: I wonder if your Honor would not think it too much out of order in this connection if Mr. Moss or Mr. Heinrick, who was the financial officer, I believe, could tell us what the cost of the tread tuber was, the new treader, which --

THE COURT: If Mr. Heinrich knows, you can put him on the stand and find out.

MR. AUERBACH: I was going to put Mr. Heinrich on just in this connection.

THE COURT: You can put him on for this connection.

MR. AUERBACH: Yes, for this limited purpose.

THE COURT: You are permitted to put him on for this purpose and put him on again without waiving your rights.

WILLARD L. HEINRICH, called as a witness on behalf of the plaintiffs, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. AUERBACH:

THE COURT: Mr. Heinrich, I gather, from reading the various papers before me, that you came with Mr. Clairmont and then left with Mr. Clairmont; is that substantially correct?

THE WITNESS: No, actually I came in December of 1962 and Mr. Clairmont left before I did. He pulled out in 1969 and I stayed until August of 1969.

I was vice president and on the board of directors. I was actually executive vice president. I was also treasurer; I was on the negotiating committee. So I'm quite familiar with these proceedings.

THE COURT: Well, Mr. Clairmont brought you in?

THE WITNESS: Yes, he did; yes, sir.

Q Mr. Heinrich, you heard Mr. Hess' testimony with regard to the tread tuber?

A I did.

Q Were you familiar with the cost of items such as the tread tuber?

A I was.

Q Can you tell us, if you know, how much was paid for, what we will call, the new tread tuber that Mr. Hess testified about?

A Yes, I can. Everything Mr. Hess said was true except that he doesn't know the whole and complete story.

Q No, Mr. Heinrich --

THE COURT: Answer the question. How much did it cost?

A The portion that he described cost $120,000, but

the portion that he did not describe, which we approved in March of 1963, cost an additional $215,000, and Mr. Clairmont and Mr. Barkett and I approved that in March of '63.

Q What was it?

A What was it?

Q What was it that you approved?

A We approved authorizations for, for example, the cooling equipment,the power controls, certain subsidiary equipment that went along with it, including the mills; and this equipment, particularly there was $55,000 included for the conveyors, that related the mills to this particular tuber equipment, and we had difficulty with that.

Some of it is long lead time to get delivery and some of this equipment was not even received by the time the strike occurred.

It was our Mr. Barkett who discovered this tuber. When he came for employment with our company in January of '63, he called it to my attention, and he said, "What in the hell is a $120,000 piece of equipment doing sitting out in the warehouse?" And I said,"Is it a good piece of equipment? Will it do something for the company?"

He said, "Yes, it will cut our costs."

Q You said you came in the company in December?

A December, '62.

Q When did that piece of equipment get there?

A I don't know, but in checking into the detail, I found that it was first ordered by the company in May or June of 1962 under the Garthwaite administration.

Q Are you saying that Mr. Hess is in error when he says it was delivered in May or June?

A I'm sure he is because it takes a longer time than that to get delivery. I'm sure it came in some time after May or June, but how much later I wouldn't know.

Q Mr. Hess did not testify to that. I do not want to argue with you, but all that Mr. Hess testified, he did not know when it was ordered, he did not testify as to when it was ordered. He said it came there in May or June of 1962.

Are you saying he is in error?

A I'm not there, so how could I say, actually?

THE COURT: You just do not believe it could have?

THE WITNESS: I'm positive it couldn't have. Not a piece of equipment like that. I know it was first approved in late May or early June of '62. I went back and checked the record, your Honor.

Q Can you testify, from your own knowledge, when it was delivered?

THE COURT: He says no, he cannot.

A No; sir; no, sir. I came in December of '62.

THE COURT: It was there when you got there?

THE WITNESS: Yes. I'm sure it was, sir.

THE COURT: I gather from your testimony that it was not complete when you got there?

THE WITNESS: No, sir, there was only, I would say, one-third. It was a bare, raw piece of equipment. The power controls hadn't been ordered for it. The cooling equipment had not been ordered for it.

And as a matter of fact, this was typical, your Honor, of the Garthwaite management. What had happened was--

THE COURT: Wait a minute. Do not get into that. Just answer questions.

THE WITNESS: Well, it rings a bell with me. I am sorry.

THE COURT: I understand.

Q Mr. Heinrich, ~~Heinrick~~, you said that the tuber came in after May or June, 1962?

THE COURT: He said he did not know.

Q Yes, but before December did it come in after

Mr. Garthwaite became chairman, do you know that?

THE COURT: Mr. Clairmont.

Q I mean Mr. Clairmont became chairman.

A I could not definitely answer.

Q It is your testimony that Mr. Clairmont did not know about this big piece of equipment until --

THE COURT: He did not say that.

Q-- until Mr. Barket --

THE COURT: He did not say anything about what Mr. Clairmont knew. He said what he knew.

A I did not know about it, Mr. Auerbach. What happened was--

Q But please answer my question.

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A I will.

Q Are you in any position to know when Mr. Clairmont found out about that piece of equipment?

A Yes.

Q How do you know?

A Because Mr. Barkett told me about it when he discovered it in January or early February of 1963. He was new to our company then. He toured the plant, he saw this large piece of equipment, and he brought it to my attention. And that's when we got into a discussion, is it a good or bad piece of equipment.

Q I am asking you whether you have any way of knowing --

A I told Mr. Clairmont.

THE COURT: That is how he knows.

Q You do not know whether Mr. Clairmont made any tour of the premises before you got there, do you?

A No, I don't know.

Q You do not know whether Mr. Clairmont took any look at the inventory schedule, do you?

A What do you call inventory?

Q Inventory of equipment, inventory of what was in the warehouse.

A I wouldn't know.

THE COURT: When you told Mr. Clairmont, did it appear to you you were telling him something new or something he already knew about?

THE WITNESS: No, it was new to him. He was surprised.

THE COURT: That is your impression. All you can do is tell us how he reacted.

THE WITNESS: Knowing Mr. Clairmont, I could tell he was surprised.

THE COURT: Okay.

MR. AUERBACH: I have no further questions.

THE COURT: Do you want to bring out anything further? Mr. Moss, finish anything you have on this tire tuber now with this witness.

CROSS EXAMINATION

BY MR. MOSS:

Q Mr. ~~Heinrick~~ Heinrich, do you have anything else to tell the court about what happened with respect to that tire tuber or tuber treader or tread tuber or whatever it was?

THE COURT: What is the word for it?

MR. AUERBACH: Tread tuber, your Honor.

Q What did the company do that you have knowledge of after you became aware of the existence of this piece of equipment? And will you describe to the court fully whether when you became aware of it, if you find it necessary to do so more than you have, when you became aware of it how complete or incomplete it was and what was needed to complete it?

A Yes, sir. The $120,000 initial purchase was a bare, raw piece of equipment that could never have been put into use without the expenditure of an additional $200 some-odd thousand. It was put through for authorization in two phases.

THE COURT: What do you mean by "put through"?

THE WITNESS: The approval. The approval was requested by manufacturing, by Mr. Barkett, to get approval

to spend this large sum of money for further improvements.

THE COURT: To whom did he address that request?

THE WITNESS: It went to Mr. Clairmont.

THE COURT: Through you or --

THE WITNESS: Yes, sir. It had to have my signature on it, and it also had to have Mr. Albert Garthwaite, Jr.'s approval as the president of the company.

Before we put it through we had to look to our industrial engineering department as to whether or not this was going to be a profitable expenditure. Albert Garthwaite, Jr. was fearful. He was afraid of Mr. Clairmont because Mr. Clairmont, frankly, was in the throes of overhead cutting and he thought Mr. Clairmont would not spend money for an improvement and cost cutting.

I said, "You don't know Mr. Clairmont very well, Albert, because this is the one thing we wished to do." So I said, "I'll approve the authorization."

He said, "Well, it's goingto come in two phases, two separate things. The first one is" --

THE COURT: Garthwaite said that, Garthwaite, Jr.?

THE WITNESS: Yes. He said, "This is going to come in two phases. The first is going to be" -- and he showed me a long two-page listing of individual tasks that had to be done, or ~~auxiliary~~ auxiliary equipment purchased. This included

clearing the space where we presently had machinery and getting rid of it and moving it to another section of the plant. It involved building foundations for this piece of equipment. And I can tell you that later we did this. We did clear areas for this. We spent all this money eventually.

Phase 2 included the power controls, the cooling system that accompanied this piece of equipment and the conveyors. The conveyors alone, I know, ran over $50,000, and these were specially built conveyors. And we had difficulty.

It was only after March that the engineering department and purchasing department put out bids to three or four conveyor companies to get them in to take a look at the task, to estimate what the job would cost, and deliver it. Some of this equipment was delivered prior to the strike, some was not.

We particularly, I remember, had trouble with the conveyors. Some of it -- and we never could get it all installed. The space was cleared. We spent that money. And, as Mr. Hess said, we eventually did sell the equipment to Goodyear.

THE COURT: Although you have not specifically said so, I assume from this that Mr. Clairmont approved this?

THE WITNESS: Oh, yes. He was all for it. We all were. Anything to cut costs we were for.

REDIRECT EXAMINATION

BY MR. AUERBACH:

Q Mr. Heinrich, you heard Mr. Hess' testimony with regard to the change in efficiency of the tire making process as a result of this tread tuber?

A Yes, I did.

Q Would you say that his testimony was substantially correct?

THE COURT: He already did say so.

MR. AUERBACH: Oh, I am sorry.

A Yes, I agree to it.

Q Would you also say that it had a substantial effect on the conversion cost of the rubber to tires?

A Yes.

Q Thank you.

MR. MOSS: Okay.

(Witness excused)

MR. TAYLOR: Plaintiffs will recall Ronny Fisher.

R O N N Y G. F I S H E R, recalled as a witness for the plaintiffs, having been previously sworn, testified as follows:

* * * * *

Rdhg 1 1714

UNITED RUBBER,

v

LEE NATIONAL

New York, February 26, 1973
10:00 a.m.

(Trial resumed.)

MR. MOSS: Your Honor, before we opened I thought I would like to say the defendants have determined not to call Mr. Clairmont ~~Clairmont~~ for cross-examination and that is why he is not here this morning.

I also, before the defendants begin, would like, in order to complete the tread tuber matter, I would like to offer in evidence a copy of a memorandum from Mr. Garthwaite, Jr. to Mr. Clairmont of February 1[illegible], 1963, with respect to the tread tuber and the company's actions with respect to it.

If it is necessary to identify it, I would like to be accorded the same privilege that the plaintiffs were accorded the other day and ask Mr. Heinrich to identify the documents coming from the records of the company.

MR. TAYLOR: Yes. I think it is in order.

THE COURT: Do you want Mr. Heinrich to take the stand for that purpose?

MR. TAYLOR: I would like to have it authenticated and look at it, your Honor.

THE COURT: Show it to counsel.

I remember Mr. Heinrich spoke of that document Friday.

MR. AUERBACH: Your Honor, the only problem we have with this is that this is a letter or a memorandum from one company official to another company official of which we would have no knowledge.

I would, therefore, suppose it would have to come in through testimony subject to cross-examination.

THE COURT: Mr. Heinrich, as I understand, testified about that document Friday so I assume we could--

MR. TAYLOR: I don't know if he just testified about the event or events or about the particular document.

THE COURT: Why not put him on the stand to see if you can qualify the document. I take it you can through Mr. Henrich?

MR.MOSS: Of course.

THECOURT: I think it would be proper to come in under cross-examination of Mr. Heinrich Friday.

Call Mr.Heinrich. I think it is appropriate to call him for that purpose.

Do you want to resume the stand?

...

W I L L A R D L. H E I N R I C H, resumed;

THE COURT: You have been sworn.

DIRECT EXAMINATION

BY MR. MOSS:

Q Mr. Heinrich, you testified last Friday, I believe, on the subject of the tread tuber.

A Yes, I did.

Q And the fact that an application or a request had been made toMr. Clairmont, as chairman of the defendant company, for approval of certain expenditures of money with respect to completing the tread tuber.

A I did.

Q I show you a copy of a document dated February 11, 1963, purportedly signed by A.A. Garthwaite, Jr., addressed to M. M. Clairmont, Chairman, with copies to various people, including you, and ask you if you could describe that document.

Just describe it, as to whether you have seen it before.

A This was my copy of the letter sent by Mr. Albert Garthwaite, Jr., the then president of Lee to Mr. Clairmont, as chairman. It was a follow-up to the

conversation I had with Mr. Clairmont telling him about the whole situation.

The letter is dated February 11, 1963.

Q Never mind describing it. It is going to get in or not.

A I recognize it.

THE COURT: You recognize it as the document you were talking about Friday?

A Yes, sir.

MR. AUERBACH: Could I just ask the witness a few questions?

THE COURT: Yes, go ahead.

CROSS-EXAMINATION

BY MR. AUERBACH:

Q Would you tell us when youfirst spoke to Mr. Clairmont about this?

A Yes. It was probably February-- I thought the other day it might have been March but it was February 1963.

Q How many conversations did you have with Mr. Clairmont about this?

A The initial one and we discussed it several times after that.

THE COURT: By several, you mean three or four or

five or six or ten?

THE WITNESS: No, I'd say three or four and it was primarily with respect to what the machine would do for us after it was entirely installed and the saving in costs.

Q Were these conversations with Mr. Clairmont in person or by telephone?

A By telephone. On a private line.

THE COURT: What do you mean by a private line?

THE WITNESS: Because every time when we first got there we had a telephone that would have to go through long distance and many times the lines were tied up. So what we did was to install a private line which we found cheaper than long distance and we could immediately have access to each other, just as you would if your office were next door and I had an inter-office telephone, except our office was in Philadelphia, and his office was in New York, and so we had instant communication. And it was more effective and it was cheaper.

Q Could you tell us in how much detail you discussed this with Mr. Clairmont?

A Yes.

Q Would you?

A It parallels what I told you in testimony the

other day, describing the various pieces of equipment and what each is necessary for to accomplish the whole objective.

MR. MOSS: Your Honor, I object to this testimony. The witness was put on for the purpose of identifying a document that I have offered in evidence.

To go into all this extraneous business is not within the limits of what he was put on the witness stand for.

THE COURT: That is technically so but there is no reason he couldn't have recalled him for this purpose if he wanted to.

Q Did you also describe in detail the savings that Mr. Hess testified about?

A Yes.

Q I don't recall, did I ask you when was the last time you discussed that with him?

A You didn't ask me.

Q I didn't ask you. When was the last time you discussed this with him?

A I can't recall. It would probably be somewhere in this area, I'd say, February 1963.

Q One other thing. When you spoke to Mr.Clairmont for the first time about this tuber, was this before

February 11?

A Yes.

Q How much before?

A I would say within a few days. I couldn't tell you precisely.

Q Had Mr. Clairmont heard anything about that before?

A No, he had not.

Q When Mr. Clairmont came in, when he first came into the picture, do you know whether he had gotten or looked at or obtained an inventory of all the equipment?

A I heard his testimony that he toured the plant but I wan't there at the time, Mr. Auerbach, and I could not answer that question.

Q I am only talking about whether he had ever discussed with you any inventory or touring of the plant or anything like that.

A Just what you heard. I wasn't there at the time, Mr. Auerbach.

Q Do you have or did the company have available to its top officials an inventory of equipment?

A I don't know.

Q Did you ever ask to see, when you came to Conshohocken, was there any time when you ever asked to

see an inventory of equipment?

A Actually, the way we maintained an inventory of equipment was by year of additions and we did that for tax purposes, but it does not list precisely each individual piece of equipment.

Q Would your list of equipment for tax purposes or otherwise include that which was in the warehouse?

A I assume so.

Q Was that available to Mr. Clairmont?

A I wouldn't know.

THE COURT: It certainly would be if he wanted it?

THE WITNESS: I'm sure. Anything was available to him if he wanted it.

Q You said you had an inventory of equipment for tax purposes. You are talking about write-downs?

MR.MOSS: Your Honor, I object to this. He was put on the stand to identify a document. To go into write-downs of inventory and so forth is really quite in-a appropriate unless Mr. Auerbach and Mr. Taylor wish to call Mr. Heinrich as their witness for all purposes.

THE COURT: They have already done this. Of course, you called him as your witness originally, simply on the tread tuber. Now, do you want to expand that and call him?

MR. AUERBACH: Yes, your Honor.

THE COURT: I have no objection to your calling him.

Why don't you decide whether you want to object to the document or not?

MR. AUERBACH: We don't object to the document. I just thought it would be relevant in this connection to question him.

THE COURT: The document is received as Exhibit what?

MR. TAYLOR: 125A.

THE COURT: Mark it.

MR. MOSS: May I withdraw Mr. Heinrich as a witness now? I put him on for the particular purpose of identifying this document. If the plaintiff wish to call him as their witness, I'm sure they will feel free to do so.

THE COURT: You are calling him as your witness?

MR. AUERBACH: Yes, your Honor. I assume that your Honor will grant us the same right that you granted us with Mr. Clairmont, to treat him, if not a hostile witness, as an adverse witness.

THE COURT: Obviously, Mr. Heinrich's interest, emotional and human, is to deny the allegations you made

in your complaint and I will take that into account.

When I use the word "hostile," Mr. Heinrich, I don't expect you to come out of there slugging.

THE WITNESS: I understand, your Honor. I understand it is a technical term.

THE COURT: It is received, then.

And you are proceeding with Mr. Heinrich as your witness?

MR. AUERBACH: Yes.

xx (Plaintiff's Exhibit 125A received in evidence.)

MR. AUERBACH: Would you read the last question, please?

(Question read.)

A Not write-downs, for depreciation purposes.

T2 a.m.

A No, write-downs; for depreciation purposes.

Q This was, as far as your understanding, the equipment that was already in the warehouse that Mr. Hess and Mr. Tarbutton testified about would have been on the list that you had of inventory of equipment for tax purposes?

A Not in quite the manner you described it, Mr. Auerbach.

It is the total amount of dollar additions by year.

Q Had you ever seen or had you toured the warehouse when you came onto the scene?

A I may have. I don't recall; I probably did.

BY THE COURT:

Q I take it, Mr. Heinrich, getting back to this exhibit, this was an authorization for $94,000 and there would be an additional authorization for $116,000 down the line?

A I believe the other day, your Honor, I used the figures of $195,000 and $115,000 which was over and above the additional $124,000 which was inoperable.

Q The $120,,000 had been spent by your predecessor?

A Yes, sir.

Q Yesterday, you were testifying just from your recollection:

A I had some other information as to the detail that made up those figures, yes, sir.

Q When is the last time you looked at paperwork in that connection?

A Last week.

Q Then your recollection is not quite as ~~phenominal~~ phenomenal as I thought it was?

A Your Honor, I am no genius. It is just one of those things. It can come up in court, and I thought I better refresh my memory. It was fortuitous.

THE COURT: Yes.

MR. AUERBACH: All right, I have no further questions of Mr. Heinrich.

BY THE COURT:

Q Mr. Heinrich, Mr. Moss will probably object to this because it is not relevant, but anyway, you heard about these lawyers, what was his name, or what were their names?

MR. AUERBACH: Lamar Jackson, was it?

THE COURT: Yes.

Q Lamar Jackson?

A I know him.

Q Who did he represent?

A He represented our company, Lee National. He never

represented me personally. To the best of my knowledge, he never represented Mr. Clairmont personally, but they had all these -- he was a senior member of a law firm named Harrington, Huxley & Smith in Youngstown, and they had always employed Harrington, Huxley & Smith for years and years.

Q Lee National?

A Lee National had. In those days, it was known as Lee Rubber & Tire Corporation. So when we came into the picture, we just found them there.

Q When Goodyear bought this, what happened then?

A You mean Aeroquip. Aeroquip purchased it.

I really don't know. On and after December 20, 1963, when we sold to Aeroquip, we no longer had any employees on the payroll over there, and I went over there in January 1964 to conclude the final calculation for the inventory.

In other words, we had taken a physical inventory on December 20, and then we hired a firm of CPA's from New York City to go out there to represent us, and to price and value the inventory, and then Aeroquip hired people, and the two of them got together, and there were some differences, and we had to decide how to resolve them.

The only further use that we ever had for Harrington, Huxley & Smith was that we were self-insurers for Workmen's Compensation claims so we employed Harrington, Huxley &

Smith on a month-to-month basis to represent us in looking after those Workmen's Compensation claims.

Q Now, on another subject, when, back to --

A Conshohocken?

Q Conshohocken, when they sold the plant to Goodyear as a subsidiary, what did you do?

A I stayed there until August 31, 1965.

I was the last sole-surviving member of Lee, and then I moved to the New York office of Lee.

Q Of who?

A Of Lee National.

Q Lee National Corporation?

A Yes.

Q You stayed there as an officer or employee of Lee?

A Yes, sir.

Q You never worked for Goodyear?

A Oh, no, sir. I am a certified public accountant, and I was looking at the final closeout of all the figures, and everything.

THE COURT: All right.

MR. AUERBACH: I have no questions.

CROSS EXAMINATION

BY MR. MOSS:

Q Mr. Heinrich, Mr. Auerbach addressed a question to

you limited to when you came on the scene. I don't know whether you testified the other day as to when you came on the scene.

Would you tell the Court, please, when you first arrived as an employee of the Lee Company?

A I went on the payroll approximately December 1, 1962, but I didn't become an officer or director of the company until December 21, 1962.

Q Now, am I correct with respect to Harrington, Huxley & Smith that your testimony is that someone in that firm looked after anything which was connected with Workmen's Compensation?

A Exclusively Workmen's Compensation.

Q Which were cases which had been in progress at the time of the sale?

A Yes. There were about ten cases, I would estimate.

Q And was it Mr. Jackson who handled those matters for you?

A No. I believe his name was Harry Manchester.

Q And he was connected with the firm?

A Yes, he was.

Q And did you make a special compensation arrangement with him to handle that matter?

A Yes. We paid his expenses.

For example, if some injured person had to have an additional medical examination, additional X-rays, he would recommend to us what we should do. We paid him a fee on an hourly basis for his time.

MR. MOSS: I have no further questions.

BY THE COURT:

Q Is that the only relationship that that firm had to them?

A Yes, sir. That's the only fee we ever paid them, and that was that.

xx REDIRECT EXAMINATION

BY MR. TAYLOR:

Q With regard to the fact that you took part in the Lee National Affairs in December of 1962, we previously discussed the fact and you testified that you had been an active participant in business with Mr. Clairmont in years prior to your coming with Lee National?

A On one occasion, yes.

Q You were, in fact -- let's go back to Russell Industries, ~~where you were~~ were you with Mr. Clairmont there?

A No, sir.

Q You did ~~finat~~ finally join him in the Atlas Plywood situation, is that correct?

A That is correct.

Q Did you go into Atlas Plywood with him?

A I don't know that, did I go into it.

Q Were you At Atlas Plywood for the same length of time that Mr. Clairmont was?

A No; he was there prior to my coming there.

Q It is a fact that you obtained some notoriety of some sort yourself in the Fortune Magazine article; you were mentioned in there as part of the Clairmont management team.

A There was a connotation in "notoriety" that I didn't like, but I was mentioned in the article.

Q If you will forgive the use of the word "notoriety" -- publicity.

A "Publicity" -- I will agree to that.

MR. TAYLOR: We have no further questions, your Honor.

MR. MOSS: No questions.

THE COURT: Thank you.

(Witness excused.)

MR. TAYLOR: The plaintiffs will call Mr. Sabol.

xx M I C H A E L G. S A B O L, called as a witness by plaintiff, having been first duly sworn testified as follows:

DIRECT EXAMINATION

BY MR. TAYLOR:

Q Mr. Sabol, were you connected with the United Rubber Workers during the time of this litigation?

A Yes, sir.

Q Can you tell us when you first became associated with the United Rubber Workers, and give us the chronology if you will, up to date?

A January of 1952.

Q What was your position?

A Field representative, servicing local unions, assisting in contract negotiations, pension negotiations, sub negotiations, and arbitration and grievance procedures.

Q In a certain area, Mr. Sabol?

A In the Philadelphia and Jersey areas.

Q And during that period of time, your duties were to cover local 227 for the international?

A I took over the duties of Local 227 about two year later.

Q From 1954 on?

A Yes, sir.

Q Were you connected with the union prior to 1952?

A With the local union, I was the local union president in the Goodrich plant at ~~Oakes~~ Oaks.

Q That's Oakes, Pennsylvania?

A Yes.

Q You were president of that local?

A Yes.

Q From about when?

A From 1946 to 1952.

Q And then thereafter with the international staff?

A Correct.

Q You told us you started as a field representative in 1952; until when did you continue?

A I retired in 1968.

Q 1968?

A Yes, sir.

Q And you have been retired ever since then?

A Yes.

Q By reason of your duties, you were very familiar with all the facts and circumstances in question in this litigation?

A I attended practically all the meetings, yes, and I am familiar with it.

Q Did the company request some special treatment for the tire-building room in the winter of 1962-63?

A Yes, sir.

Q And what was the nature of the request by the company?

A Mr. Barkett had requested that we give the tire builders oh, let me see if I have a copy of it here -- that the employees in the tire-building classification be exempt from the bumping provisions.

THE COURT: In other words, that meant that nobody could bump a man off his job?

THE WITNESS: Yes.

MR. TAYLOR: This has been referred to as either super seniority or key job classification.

THE COURT: Key job classification is quite clearly not super seniority.

MR. TAYLOR: But for the purposes of the witness' identification only, that is what we are talking about with respect to bumping.

THE WITNESS: Correct.

THE COURT: Do you agree that key job classification is the correct description of this?

THE WITNESS: Of this bumping?

THE COURT: Of this anti-bumping.

THE WITNESS: No, because key job classification included more jobs than that.

THE COURT: This is a sub-category then?

THE WITNESS: Yes.

BY MR. TAYLOR:

Q Now, Mr. Saborl, you have in front of you a document;

will you kindly tell us what it is?

A It is a side agreement signed by the company and union officials which reads "Employees in the tire-building classification shall not be subject to the bumping procedures as set forth in Article 14, Section 1401.2, and Section 1401.3 except by employees who have previously qualified as tire builders.

It is understood that this is a side agreement to the existing working agreement. It is a temporary emergency provision which will automatically terminate on June 3, 1963 and shall be without precedent."

Q And it is dated January --

A January 22, 1963.

Q And is this, Mr. Sabol, a copy of the agreement which put into effect this so-called super-seniority status for the tire builder at that Conshohocken plant?

THE COURT: Let's not call it "super-seniority" because it's been clearly established that it isn't.

MR. TAYLOR: By whatever term it is known, we all agree on what it is.

THE COURT: I know, but --

Q Did these agreements come from your personal files?

A Yes.

MR. TAYLOR: Your Honor, I would like to offer

this in evidence, and we have finally found the original written agreement.

THE COURT: Have you any objection to this?

MR. MOSS: No.

THE COURT: This is received as 126-A.

xx (Plaintiff's Exhibit 126-A was received in evidence.)

MR. TAYLOR: Your Honor, before we continue any further, and particularly in view of the fact that Mr. Clairmont is not back for cross examination, Mr. Sabol also, and fortuitously, has provided us with further documents known as Form 4 which are insider stock trading reports of various company officials and controlling stockholders for certain periods that have been in question in this litigation of which document Exhibit 60A in evidence is one such form that we had in from Mr. Clairmont, and Mr. Clairmont has been testifying, or has testified that he had purchased stock, and so had his associates, at various times, and therefore, your Honor, I would like to introduce this series and have this put in the record.

THE COURT: As one exhibit?

MR. TAYLOR: One exhibit, No. 60A is one such document. These recall other documents of the same statements filed with the Securities & Exchange Commission.

THE COURT: Let's call this 60A-1.

MR. MOSS: Where did Mr. Sabol come upon these documents? And how does he happen to be producing them at just this last minute?

THE COURT: Does it make any difference?

THE WITNESS: They were in my files at home.

MR. MOSS: They were actually in your files at home?

THE WITNESS: Yes, sir.

Q Would you tell the Court what you thought about these and the other documents that we are going to introduce, the minutes of the negotiations?

A I thought they were very important and so I brought them down.

Q You were under --

MR. MOSS: He has been sitting here for weeks.

MR. TAYLOR: No, he was not.

THE WITNESS: I was not here, and I didn't know what was presented as an exhibit, and I brought these [illegible] and I find that they weren't put in as Exhibits, so that's why I brought them.

THE COURT: Show them to Mr. Moss.

MR. TAYLOR: There is a series, your Honor.

I might note for the record, your Honor, that one of these form 4's was signed by Mr. Heinrich as well.

(Pause.)

MR. MOSS: I object to these documents until there is more proof of where they came from.

THE COURT: Unless you represent to me that it is vital to your defense, I couldn't care less where they came from.

MR. MOSS: I think it is important to know whether he sought for them after the trial began.

THE COURT: What difference does it make? Are they such document or aren't they?

MR. MOSS: I am sure they are.

THE COURT: Unless you have some objection to them, I will take them.

MR. MOSS: I object to them on the grounds of relevance.

THE COURT: I think that's probably a good objection but you can argue that on summation.

Objection overruled.

MR. TAYLOR: Document 60-A(1) is a Form 4 filed by Matignon N. V. by Mr. Harry L. Schick, his authorized signature, I believe, as secretary of that firm for the month of June, 1963, shows the interest of Mornay Corporation of which Martignon has a 35 percent stock interest.

THE COURT: Now, is Mornay one of the corporations that has been identified as owned by Mr. --

MR. TAYLOR: Mr. Clairmont identified it as his vehicle, and with it were certain trading associates, and these are them.

60-A(2) is a form 4 for June 1963, filed by Darfina, A. G. again signed by Mr. H. L. Schick as authorized signature showing Darfina's interest of 35 percent in Mornay ~~Mornet~~ Corporation.

Sixty A(3) is Form 4 for the month of June, 1963 by Mr. Clairmont, with respect to his interest of 30 percent in Mornay ~~Mornet~~ Corporation, and your Honor, Document 60-A itself is Mr. Clairmont's statement for the same month of June, 1963 for his personal direct holdings. These were the indirect holdings.

Sixty A(4) is a form 4 for the month of January, 1963, filed by Mr. Claimont with both respect to his direct and indirect holdings of the company's stock through Morney Corporation.

THE COURT: The company, of course, is Lee National.

MR. TAYLOR: At all times.

MR. AUERBACH: Lee Rubber & Tire.

MR. TAYLOR: It is all for Lee Ruber & Tire Corporation, your Honor.

THE COURT: All right.

MR. TAYLOR: 60A-5 is form 4 for the month of October 1963, signed by Mr. Clairmont with respect to both his direct and indirect holdings of Lee stock.

60A-6 is form 4 for the month of October 1963, signed by Matignon, N.V.; by Mr. H. L. Schick, as secretary-treasurer, showing its interest, direct and indirect, in the Lee stock.

60A-7 are three such forms for the month of November 1963, which are attached and will go in as attached documents for that month, the first being by Mr. Garthwaite, Jr., of his own holdings; the second being the form 4 for November 1963, signed by Mr. Heinrich, for his holdings, and the third being Mr. Schick for his personal holdings.

60A-8 is the form 4 for December 1963, signed by Mr. Clairmont, for his direct and indirect holdings of the company's stock.

60A-9, and apparently the last in the series, is the form 4 for December 1963. It is an attachment of four such documents for that month, the first being by Darfina, A.G., signed by Mr. Schick.

This next one presents a small problem because it is apparently Matignon again by Mr. Schick, as authorized

secretary but there is another name involved here and A. Marcus, who may have been another stockholder of this Matignon, we are not sure, your Honor, and perhaps Mr. Heinrich will be able to elucidate.

THE COURT: You are not going to elucidate unless you put him on the stand, and if it is not important, don't put him on the stand.

MR. TAYLOR: I don't think so, your Honor.

The third document is Matignon, N.V. by Mr. Schick, and the last is Mornay Corporation, and its holdings by Mr. Clairmont.

All of these documents are the official forms filed with the Securities and Exchange Commission showing insider purchases and transactions for every month; the company then being listed on the New York Stock Exchange and I believe it is also a rule of the Exchange.

THE COURT: Any further questions of this witness?

MR. TAYLOR: Yes, your Honor. I am just trying to -- I was going to give you a set of these.

THE COURT: I don't want a set. Go on with the witness.

MR. TAYLOR: Your Honor, if patience will permit, Mr. Sabol also has come up with the missing minutes of

union negotiation meetings, to complete the whole set that we have already had in evidence, and preferably allowable, and if Mr. Moss would like to question him on it, we are now producing the minutes of meetings of May 31, 1963, June 7, 1963, June 11, 1963 June 14, 1963, June 19, 1963, June 21, 1963, June 24, 1963, June 26, 1963, June 27, 1963, June 28, 1963, July 1, 1963, and July 11, 1963.

THE COURT: Mr. Moss objects on the ground they should have been received sooner and he has an exception to my ruling why they have not been produced sooner.

MR. TAYLOR: Are these admitted?

THE COURT: Yes.

MR. TAYLOR: Your Honor, I suggest we mark them consecutively from ~~115~~ 127, I believe, on. Since the same series is ~~in~~ in two different numbering fashions we may as well continue them.

THE COURT: Give Mr. Moss copies.

MR. MOSS: I do think I am entitled to see them at least now, don't you think so, your Honor?

THE COURT: I think so.

MR. TAYLOR: We are going to produce them.

MR. MOSS: I would also like to clarify for the record Mr. Taylor's statement that this completes the sets of minutes. If they only go through July 11, I would

point out that the meetings went through February 1964.

MR. TAYLOR: They may not be absolutely complete.

THE COURT: They are completed as far as they are completed, put it that way.

MR. TAYLOR: That is true, absolutely, your Honor.

MR. MOSS: 28 is in already. 100A, supposedly.

MR. TAYLOR: It is?

THE COURT: In connection with this offer, I would like you to point out anything in these minutes which you claim has any significance to the trial which is different from what is already in evidence.

MR. TAYLOR: Well, your Honor, I'll be perfectly honest with you. We only received them last night at 11:00 p.m.

THE COURT: Then they are excluded. I reverse my ruling and they are excluded on the ground that if you are not in a position at this time to say why you think they are relevant, they are excluded.

MR. TAYLOR: Well, your Honor -

THE COURT: You have an exception. I won't hear any argument on it. I'm sick and tired of this case being prepared in the courtroom. Unless you are prepared at this time to say why you think those are relevant, they are excluded and you have an exception.

MR. TAYLOR: Yes.

Now, your Honor, the only thing I can say, it is unfortunate without prior discovery something has ---

THE COURT: You don't need discovery to get your own witness.

MR. TAYLOR: Your Honor, certain of the witnesses felt they were turned over to counsel earlier.

THE COURT: You are excluded and precluded from making any argument, which on appeal you can think of anything you could have thought of now.

MR. TAYLOR: Your Honor, I am perfectly willing to accept your Honor's statement. But in general--

THE COURT: I don't care about in general. Tell me where it is specifically relevant. You tell me where. If you have not looked at these to find out, they are excluded.

MR. TAYLOR: The testimony covers this period--

THE COURT: I don't care what the testimony covers. If you are offering evidence which you tell me you have not looked at, it is excluded on that ground.

MR. TAYLOR: I know what should be in there.

THE COURT: I don't care what should be in there. It is excluded on the ground you are offering evidence you have not looked at here in the 12th day of trial or

whatever it is.

My wife doesn't think I am a patient man but I do, and my patience is exhausted.

MR. AUERBACH: The only reason I think they should be in, in any event, your Honor --

THE COURT: I have told you why it is out and I am not interested in any further argument.

This is in the exercise of my discretion.

MR. AUERBACH: May they be marked for identification, your Honor.

THE COURT: Of course.

MR. TAYLOR: Then, your Honor, I will offer them for identification as commencing with 127A.

The minutes of negotiation meetings of May 31, 1963, as 127A; June 7, 1963 as 128A; June 11, 1963 as 129A; June 14, 1963 as 130A; June 21, 1963, as 131A; June 24, 1963 as 132A; June 26, 1963, as 133A; June 19, 1963 as 134A; June 27, 1963 as 135A; July 1, 1963 as 136A; and there are two for July 11, 1963; the morning session would be - of July 11, 1963-- would be 137A, and the afternoon session of July 11, 1963, will be 138A.

THE COURT: You may put on record any explanation of why you are offering them, as you have not read them.

MR. TAYLOR: Your Honor --

THE COURT: Put on an explanation why you didn't receive them until 11 o'clock at night.

MR. TAYLOR: For the witness or myself, your Honor?

THE COURT: I don't care.

MR. TAYLOR: The witness brought with him from his own files after going ~~home~~ home on the week-end and reviewing and seeing we didn't have a complete set before and he had had the bulk of all these notes in his official duties as international representative, and he told me he had turned over all the files to the previous attorneys and was surprised that we didn't have a complete set and --

THE COURT: When did you discover this?

MR. TAYLOR: This week-end. This week-end.

THE COURT: Why didn't you ask him about it two weeks ago?

MR. TAYLOR: Your Honor, it wasn't even our intention originally of calling Mr. Sabol.

THE COURT: You knew Mr. Sabol was -

MR. TAYLOR: Never thought of asking him if he had any records, your Honor.

THE COURT: Why didn't you think of asking him?

MR. TAYLOR: Like everybody else, I thought we

had everything we could obtain.

THE COURT: Why don't you ask your own client where they might be?

MR. TAYLOR: I certainly had asked, your Honor, and I had gone through both the international pretty thoroughly and the local.

THE COURT: Why didn't you ask Mr. Sabol?

MR. TAYLOR: He had been retired and we had not intended to try to produce him, trying to shorten the trial down, and I just never talked to him.

I had the pretrial deposition and I certainly thought we knew what he knew. We didn't think he had any records.

MR.AUERBACH: Your Honor, it didn't occur to us that he had these sets because it just happened that he happened to keep them.

MR. TAYLOR: Mr. Garber --

THE COURT: When did you find out he had them?

MR. TAYLOR: He brought them with him yesterday, last night.

THE COURT: Did you talk to him on the telephone?

MR. TAYLOR: He returned to New York.

MR. AUERBACH: He was here Friday and he dug through his files.

MR. TAYLOR: He brought them in last night.

THE COURT: You told him to look?

MR. TAYLOR: Well, I guess I did. He certainly knew to look because I had asked Mr. Hess to look again.

THE COURT: Why didn't you arrange to have him telephone when he found them?

MR. TAYLOR: He found them this week, your Honor. He was returning to New York.

THE COURT: You didn't think it was worthwhile going through the papers before going to court and that is the sum of it.

All right, I adhere to my ruling.

MR. TAYLOR: Thank you, your Honor.

THE COURT: If before the case ends, and there will be no adjournment for that purpose, you can find anything particular in this which is of importance, I will reconsider.

MR. TAYLOR: Well, in general, what will be of importance that I know of is in here.

THE COURT: I don't care about general. If there is anything of particular importance, changes, materially of facts that are already in evidence, I will let you re-offer it.

MR. TAYLOR: All right.

BY MR. TAYLOR:

Q Mr. Sabol, were you present at virtually all the bargaining and negotiation sessions between management and union before Mr. Clairmont took over and for several years prior thereto?

A To the best of my knowledge, yes.

Q How would you describe the relations between the company and the union in those years?

A Well, the relationship was the same as with other companies. We have had our problems, we had negotiating problems, we had to take strike votes in order to reach an agreement. Practically to get international approval of the strike, it practically took two weeks or possibly a little longer to get the okay from the international union.

So possibly two weeks before the contract termination date we would take a strike vote. We had taken strike votes at Lee Tire just as well as we had in other plants.

THE COURT: Listen, this witness is here pursuant to your request to reopen, your having rested.

MR. TAYLOR: Originally a week ago.

THE COURT: You originally rested a week and a half ago and you moved to reopen to bring in new evidence.

MR. TAYLOR: That is all this is.

THE COURT: Unless this witness has really something new, just to reinforce everything that has been said before, let's not have it again.

MF. TAYLOR: Yes, it is mostly new, your Honor.

THE COURT: What is new? What he said so far is just exactly the same as before.

MR. TAYLOR: If your Honor will be patient, there may be a couple of items here that have to do with Mr. Clairmont's testimony, okay?

THE COURT: Go in to those. Don't maybe. You know what you are going to ask the witness. Zero in on what is new and don't go over what we have had before.

MR. TAYLOR: I will try to do that, your Honor.

THE COURT: All right.

Q With reference to the negotiations for the working agreement which was -- I think took effect on or about June 30, 1961, that would be the working agreement prior to the one in question in this litigation -- as a matter of fact, forgive me, that would be this agreement that expired June 30, 1963, that is correct.

Could you give us some explanation, please, of Section 17.19 and, as a matter of fact, would you read it?

MR. TAYLOR: That would be the working agreement, your Honor, I believe it is Reg 35 in evidence, your Honor.

THE COURT: Reg 35.

MR. TAYLOR: And 1719, your Honor, will be, at the back of- that is on page 27 of that agreement, your Honor.

MR. AUERBACH: Your Honor, I don't know whether our copy of the exhibit shows this, but in the printed contract itself, on page 7 at the bottom it says "All 1961 negotiated changes shown in bold type."

THE COURT: I see. That means all caps in this.

MR. TAYLOR: Yes.

MR. AUERBACH: I don't know how it is shown in yours, but if it isn't --

THE COURT: In other words --

MR. TAYLOR: Yes, it is, your Honor, yours also has bold caps.

THE COURT: It is all caps.

MR. TAYLOR: All caps means changes from the previous agreement.

THE COURT: I see.

MR. AUERBACH: I just wanted to call that to your attention.

THE COURT: Thank you.

MR. AUERBACH: All of 17.19 is, therefore, all new.

Q How did 17.19 come about, Mr. Sabol?

A In a prior contract--

Q Excuse me. Would you explain what it is, first, and then tell us how it came about.

A It is in regard to bargaining unit jobs within the Consoshohocken plant. In a prior contract we had a very restrictive clause whereby the company was prohibited from discontinuing operations in the plant during the term of the agreement.

We had an arbitration case involving what we call a print shop, where the company did their own -- had their own printing done within the plant by members of the bargaining unit. They made their own cards, letterheads, any printing necessary they were able to do it.

Under the old agreement, they discontinued the operation. We went to arbitration and the arbitration ruled in the union's favor, that the company had no right to discontinue a job with the print department.

The company had to pay back-pay to all employees. I think there were six employees involved.

THE COURT: Six?

THE WITNESS: I think there was six, yes, to the

best of my knowledge. And they had to pay all back-pay to these employees.

They were assigned to other work within the plant and any make-up pay they had to pay make-up pay.

After that contract terminated, the company was quite insistent on getting that provision out of the agreement. They proposed that Section 17.19, as the 1961 agreement, and it reads as follows:

THE COURT: I can read it. You don't have to read it.

Q It is known as a sub-contracting clause?

A Yes.

Q What is the effect of that clause?

A Well, the effect of this clause, they can bargain out any job, they can discontinue any job at the Conshohocken plant. They can have the work done outside the Conshohocken plant.

Q What work can they have done outside?

A Any work whatsoever.

Q Including all operations of the plant itself?

A Correct.

Q Is this an unusual clause in a union contract?

A Very unusual. A lot of labor unions don't want these clauses and they tell the membership to tell the

field men to keep them out of the contracts.

Q Does sub-contracting give rise to what is known as runaway shops?

A Yes. They close down a shop, move out, get the work done somewhere else. Sub-contract it out to individual plants.

Q Would a union strike over such a thing as sub-contracting work out --

MR. MOSS: I object to that.

THE COURT: I will take judicial notice they probably would.

Q In any event, it is an extremely important clause, is it not?

A Yes, because it can ruin all your membership in the local union, eliminate jobs.

Q So in this agreement the company could have taken out various production items, out of the plant and done it elsewhere?

A Out of this provision.

Q They could have done it on their own, moved 50 miles away from the plant and done it themselves?

A Correct.

Q And they could have hired someone else to do it for them?

A Yes, sir.

Q They could have stopped doing it altogether and bought on the open market whatever was being produced in the Conshohocken plant?

A Yes, sir.

Q Could you tell us how come the union allowed such a clause to get in this contract?

A Well, as I say, the company came to the local union and requested we do something due to the fact they had the problem with this printing shop. They said that conditions were such that they needed some relief in some of these clauses and the local union membership went along with them.

We had to sell it to the membership.

The committee discussed it with management and then we had to go back to the membership and it was quite a long discussion with membership before we got it across.

Q The company had taken a hard line position on this issue?

A Yes, sir, they were very insistent on it.

Q And the company was then Mr. Clairmont or his predecessor?

A That's right, his predecessors.

Q That would be Mr. Garthwaite and his administration?

A Yes, and Mr. Conway.

Q To the best of your knowledge, did Mr. Clairmont have anything to do with these negotiations in 1961?

A Not that I know of.

THE COURT: Did Mr. Garthwaite have to do with it or Mr. Conway?

THE WITNESS: Mr. Conway. He was the spokesman for the company.

Q This clause covers only bargaining unit employees?

A Yes, sir.

Q That is correct.

And bargaining unit employees, which is the subject of this litigation, are only the production employees represented by the United Rubber Workers?

A Yes.

Q Does this cover supervisory or salaried employees or office staff or anybody like that?

A They are excluded right in the recognition clause.

Q Right. What protection did the union have against the possibility of the company deciding to contract everything out?

A None.

Q None?

A None.

Q Except the special distribution clause in the welfare agreement, is that right?

A That is correct, if they shut down the plant entirely then we have this special distribution.

Q I see.

THE COURT: Could they shut down everything but one employee under this contract and you would not have a special distribution?

A Possibly, your Honor, yes. One union employee, your Honor?

THE COURT: Yes.

Q Did the company maintain an industrial engineering department at the Conshohocken plant?

A Yes, sir.

Q Could you tell us what it was and who it was?

A Well, there were two employees, two industrial engineers, Mr. Rudderow and Mr. Kolotzback, and they were going through the plants.

In the tire industry there are numerous changes being made occasionally, possibly once a week, sometimes more, where they vary the size of fabrics in making a tire. They could widen a fabric or narrow the fabric,and as you

narrow the fabric and widen it, it causes a different job when you are making the tire.

THE COURT: You mean styles in tires change, in other words?

THE WITNESS: Yes, also to reduce cost. If you cut down a fabric, naturally it is going to be less fabric involved and you can make the tire cheaper and that controls the operation of the building of a tire. It makes it harder or it makes it easier.

So any time any change is made, the time study men would come around and just study that one element in which the change is being made.

Under the contract he can only study the elements where the charge is made. So they come around and make a study and then come down with a standard on it which would be a change upwards or downwards based on what they find when they make the study.

Q This is a re-study of various jobs which would fall into the piecegoods or incentive workers-

A Incentive workers.

Q -- class?

Was this department in operation, to the best of your knowledge, after Mr. Clairmont took over?

A Yes, Mr. Klotzback was let go and they got a

young fellow in there so they always had two men in there plus their secretary.

Q Were these people engaged at all times in time studies and reevaluating jobs?

A They were going through the plant looking at jobs. Whether they were time studying, I don't know. They were there with a watch, which is normal for an IE man to be doing.

THE COURT: I forget, I apologize, I wasn't paying close attention.

Were you physically in the plant during this period much?

THE WITNESS: Yes, I was in the plant quite often. Every negotiation or grievance meeting I was in the plant attending these meetings. I was going through the plant on numerous occasions.

Q You also were the area representative covering the Oaks and Pottstown plants, were you not?

A Yes,sir.

Q And the contracts there?

A Yes, sir.

Q And they were all represented by the United Rubber Workers, is that correct?

A That is correct.

Q The industrial engineering department, coming back to that subject, did the company have the right to in effect revalue all jobs by changing of the elements?

A Yes, sir, under 801, I think it is, or 807. 807.

Q Section 807?

A Yes.

MR. TAYLOR: That would be page 10 of the agreement, your Honor.

THE COURT: Yes.

Q With regard to job evaluations or restudying incentive rates for pieceworkers, did the contract give the company any right to conduct any part of this procedure?

A Conduct any--

Q Any part of the procedures of reevaluating jobs and changing rates?

A Yes, based on 807, yes. Any of the conditions came up that are listed in 807, they have a right to restudy that part of the job or the whole job. It all depends on what part applies to the condition at the time.

Q Does Section 801 specifically provide that the union agrees to cooperate with management -

THE COURT: Don't ask him to read the thing. I can read that as well as he can.

Q Section 801 expressly provides that the union will agree to go along--

THE COURT: Section 801 says what Section 801 says. I can read it.

Q So that the company had the right to revalue by changing the elements or trying to revalue all jobs,right, subject to the grievance procedure of the contract?

A Correct.

Q As a protection for the union.

If the company felt that productivity was low or certain workers were not working, didn't they have the right also in this agreement to file their own grievance and go to arbitration on these issues?

A Under 302, yes.

MR. TAYLOR: The subject is arbitration, your Honor, and it appears at page 4 of your copy, your Honor. 302 is on page 5 that we are talking about.

THE COURT: I see.

MR. TAYLOR: Right.

Q Ordinarily, in the period from Mr.Clairmont's tenure, let's say anywhere from the summer of 1962 to the summer of 1963 when the strike commenced, were there a lot of changes in elements of jobs in that plant?

A I would say so, yes.

MR. MOSS: Your Honor, I object to that unless the witness says that he was there to see. The other witness they had here, Mr. Hess, testified the other day that he couldn't remember any .

THE COURT: Maybe he can remember them.

MR. MOSS: Mr. Sabol wasn't there every day, I don't believe.

THE COURT: In other words, the objection is to the form of the question-- do you remember any changes?

THE WITNESS: I recall being in grievance meetings regarding rates so there must have been some changes, your Honor.

THE COURT: Resulting in grievance.

THE WITNESS: The result of ~~greivance~~ grievance and being in the meetings.

Q Could you tell us whether the rates for piecegoods workers at the Conshohocken plant in the period in question were any looser, for instance, in the Oaks or the Pottstown pants or any other plants that you covered?

A No, based on the same conditions I think at one time in one of our grievance meetings with Mr. Conway, he had criticized the employees about their work and their production and I definitely remember telling Mr. Conway under the same conditions, with the same equipment, the

ployees at Lee Tire would build as many tires as they do in Oaks or Firestone.

Q You mean Pottstown?

A Yes. Firestone is Pottstown and Oaks is Goodrich.

Q Right.

Did the company ever make a proposal after Mr. Clairmont took over and before May 1963 for a complete job evaluation program in the plant?

A No, sir.

Q To the best of your knowledge, was the first time you ever heard of such a request the beginning of negotiations for the new working agreement in May 1963?

A That is correct.

Q You heard that from Mr. Conway?

A Yes, sir.

Q If there was something vitally wrong with either the production facilities or the productivity of the workers, at the Conshohocken plant, or something were drastically wrong with the profitability or some serious condition with the company, would the company have the right to reopen this contract in midstream?

MR. MOSS: Your Honor, I object to that. The testimony that is relevant here is what the company did or didn't do. There has been a lot of testimony about

that President Burdon said they could not reopen it in the middle of the term.

THE COURT: Overruled,

Q Could the company have asked to reopen the contract for a serious consideration?

THE COURT: The answer to that is yes.

A Yes.

MR. TAYLOR: Yes,your Honor. Forgive me.

THE COURT: The answer to that is yes, the company could have asked.

You don't need a witness for that.

Q Do you know of any contract being reopened in midstream?

A Well, I think when we signed an agreement, that is opening a contract and we signed an agreement right in this plant and I do know of other plants where they opened a contract in midstream and made major changes.

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Q So that did the company and did Mr. Clairmont ever ask the union to reopen this contract to make some changes?

MR. MOSS: I object to that question by form too.

MR. TAYLOR: I asked him did he.

MR. MOSS: Does he know?

THE COURT: That's assumed. Let's find out what he knows.

THE WITNESS: I was involved.

Q If any request had been made, you would know about it?

A Yes.

Q You mean you knew about it directly or you were informed about it by the local union president or local union Negotiating Committee, isn't that true?

A I would be called down to meet with the local committee.

Q And you filed regular reports with the international?

THE COURT: Just ask the questions. I am overruling the objection.

MR. TAYLOR: Thank you, your Honor.

Q Did the company ever ask to reopen and renegotiate that working agreement from 1962, the summer of 1962 and prior to the official reopening in the spring of 1963?

A With the exception of that side agreement on tire

building, that's all.

Q Were you ever informed after the strike began in 1963, were you ever informed that the company wanted to hire strikebreakers?

A No.

THE COURT: Did you say no?

THE WITNESS: No, sir.

Q In September 1964, has been the testimony of Mr. Clairmont?

A Yes.

Q Do you have any knowledge as to what economic and working conditions were in the Conshohocken area and Philadelphia in the period 1962 and 1963?

A About the time of the strike?

Q About the time of the strike.

A There was a plant directly across from Lee Tire called Walker Brothers, they made electrical wire, they were closed down.

They closed down completely. There was another plant, John Wood, which made boilers, and they were shut down, and Allanwood, a big steel company, approximately five or six miles from Conshohocken had quite a number of layoffs.

THE COURT: In other words, the situation was bad.

THE WITNESS: A lot of unemployment. Yes, sir.

Q There was a lot of labor then available that could be approached?

A Yes.

Q To work the Conshohocken plant.

A Yes.

Q But the first such threat that you heard of was in September 1964?

A Yes, sir.

Q Do you have any knowledge as to whether or not the Pennsylvania, I don't know if the term is correct, but the Pennsylvania State Employment Agency would refer workers or employees to a plant such as ~~Ceshohocken~~ Conshohocken in its then condition?

A They will not refer employees to a plant that is out on strike.

Q So that a request to such an agency would be pretty ridiculous, pretty useless, is that correct?

A Correct.

Q Did Mr. Clairmont ever make mention of, or request that the union join him on a trip to the Oakes or to the Pottstown plants?

A No, sir.

Q Or any of the -- a comparison of the ~~Oakes~~ Oaks and Pottstown contracts with Lee?

A No, sir.

MR. MOSS: I assume that that means as far as he knows.

THE COURT: Obviously.

MR. TAYLOR: Obviously only as far as he knows.

MR. MOSS: One wouldn't gather that from most of your questions.

MR. TAYLOR: Then I specifically state that all my questions are asked of this witness strictly from his own knowledge.

THE WITNESS: If I may elaborate on that a little bit, I have been asked by members of the Committee, being a former member of Goodrich and president of the local union, and being in the Firestone plant as a field representative, I have been asked by several members of the Negotiating Committee if I couldn't get them throughout the plant. They would like to go in another plant and see how operations are performed there, and I tried to get them through and the company turned me down, so I don't think it would be possible to go through these plants.

They have some equipment in these plants they don't like anyone else to see, especially their competitors anyone who works in a competitor's plant, so it is pretty tough to get into a plant.

Q When you say the company turned it down, do you mean the Oakes or the Pottstown companies and Goodrich?

A Management turned me down when I asked them to bring the people up.

Q When was this that you asked to bring the union people over to either the ~~Oakes~~ Oaks or the Pottstown plants?

A I have done that on several occasions.

THE COURT: When? When?

THE WITNESS: Prior to the strike. Prior to the strike.

THE COURT: This was in connection with this negotiation that resulted in this strike?

THE WITNESS: Not necessarily, your Honor, no. I think people working in the tire plant are very curious to see how tires are built in other plants, to see how they perform in their plant in comparison to his plant and that is the reason they like to go through another plant, to see the conditions they work under so it could have been quite some time before.

THE COURT: But you don't remember when?

THE WITNESS: No, I don't remember the exact date, but I know they asked me and I took it up with management of the other plants and I was turned down.

Q Specifically, did you ever make any such request

or inquire because of a request by Mr. Clairmont or any other member of the company?

A No.

Q At any time?

A No.

THE COURT: Is that all of this witness?

MR. TAYLOR: Just one moment, your Honor.

(Pause.)

Q One last question, Mr. Sabol.

In your experience as a field representative covering verious plants in your area, was the management at Lee prior to Mr. Clairmont any easier or harder to deal with than any other company?

A I would say about the same.

MR. TAYLOR: No further questions, your Honor.

MR. MOSS: Could we have a few minutes to see if we want to have any further examination?

THE COURT: All right. Ten minutes.

(Short recess taken.)

MR. MOSS: We have no cross examination, your Honor.

THE COURT: All right, you are excused.

(Witness excused.)

MR. AUERBACH: Your Honor, we have no further wit-

THE COURT: Is that the end?

MR. AUERBACH: Yes, your Honor.

THE COURT: In light of that, I think I will reconsider my ruling and permit all of these documents in evidence, but don't stop now.

If you can work it out with the clerk later, please do so.

MR. TAYLOR: They will come in as 127-A et seq because they have already been marked for identification.

THE COURT: Yes.

Now, you are resting?

MR. TAYLOR: Yes, your Honor.

THE COURT: Mr. Moss, do you make a motion to dismiss?

MR. MOSS: You mean they are through?

THE COURT: Yes.

MR. MOSS: I want to make a motion to dismiss.

THE COURT: You have made your motion. Why shouldn't I grant it? Now let's concentrate on the second cause of action, and we will deal with the first cause of action later.

Let's start with Judge Mansfield's opinion on page 1187 where he said, "If the record before us at trial were the same as that before us on this motion, judgment would be entered in favor of the company."

What have you proved that wasn't before Judge Mansfield?

MR. AUERBACH: Okay. I would like -- I had it open to that point, your Honor, but I would like to say this if I may be permitted this latitude.

THE COURT: Yes.

MR. AUERBACH: By way of background of explanation because I realized I had to devote myself to this.

Your Honor knows, and I don't say that by way of explanation, we, for some reason or other, the prior counsel didn't take discovery proceedings. This is the first case I have tried in about twenty years -- the first civil case in at least twenty years without having the benefit of that, and I hope it is the last.

THE COURT: Did you ever make a motion to re-open?

MR. AUERBACH: We did, your Honor, and it was opened because the case had been -- we made it very shortly after we got in. It was denied by Judge Mansfield, and it was opposed very vigorously by the defendant.

We believe that if Judge Mansfield were sitting here as the trial judge that he would say very quickly that there was a lot that he didn't have before him that he has before him today, not only in specifics but in terms of the

overall relationships, and I only ask you, your Honor, to feel as free to change as you would if you had made the original decision or as Judge Mansfield would.

THE COURT: It is quite clear under the case that that is my obligation.

MR. AUERBACH: Judges tend to feel freer to change their own decisions than they do that of another judge.

THE COURT: Well, the cases are quite clear that my obligation is not to be bound by Judge Mansfield's opinion except insofar as I think he was correct.

MR. AUERBACH: Yes, your Honor.

Now, in the first place, I want this too at the outset. I am going to be handling the labor and manufacturing aspects of this, and Mr. Taylor will be handling more of the financial although there will be some overlap but that's the way we prepared the case.

We had the benefit, if that's what it is, of Mr. Chairmont's ~~Clairmont's~~ testimony. That certainly wasn't before Judge Mansfield.

We had the benefit of Mr. Heinrich's testimony which wasn't before him.

THE COURT: How do you think that that helps your case then?

Let me, by way of preliminary, just give you my reaction to the witnesses because I think this case is

rather unique in that I don't think any witness has appeared before me who has not told the truth as he saw it.

I don't find any witness who I think didn't testify truthfully as he saw it.

Quite obviously, witnesses remember things differently than they happen, and neither Mr. Hess, nor Mr. Clairmont are immume from the human reaction to remember things in the way that now seems better from their present point of view.

For example, Mr. Hess remembers very clearly that he at various times while the case was still open said to the management, "I will give you anything you want."

It is quite clear to me that that never happened. It is equally clear to me why he remembers having said it because of the present posture of the case.

Mr. Clairmont remembers insisting on the union to visit the plants of his competitors.

Mr. Sabol's testimony indicates quite clearly that that didn't happen.

I am inclined to accept Mr. Sabol's statement as to what the facts were. It is perfectly obvious to me why Mr. Clairmont remembers himself as having said that because that's the kind of thing you like to remember yourself as having said.

But on the ultimate issues he testified categorically that he had no intention of closing this plant back on the day it opened.

And I asked him, "Did you ever make any studies as to the feasibility of closing this plant and selling it at a profit?" And he said he never did until after the board of directors had decided to give up the ~~spunk~~ sponge. I credit that testimony.

MR. AUERBACH: Well, your Honor, I would like you to defer until we have finished speaking.

THE COURT: That was just my reaction to the witnesses.

MR. AUERBACH: I understand that.

I would like to say that I think that Mr. Clairmont's testimony was something less than completely credible.

THE COURT: That's not unusual an attitude for an opponent to take.

MR. AUERBACH: But I think I would now have to document some of the things that make it so.

Obviously, your Honor, this case revolves around Clairmont. This is the guy that made the decisions.

THE COURT: Right.

MR. AUERBACH: He may have had to take it up with

his board or anything like that.

THE COURT: Let's assume that what he said went.

MR. AUERBACH: Right. I think we can fairly well say that.

Now, I think there are certain other things that I'm going to ask your Honor to find which I don't think you will find hard to find.

Mr. Clairmont is an extremely brilliant able, hard-working man with a grasp of details and a capacity for hard work and knowing everything about what goes on.

If genius is the capacity for taking pains, he has it. He's got to know what to take pains about. He has that too.

I think your Honor could easily find that any situation of size, of substance, that Mr. Clairmont goes into, he knows all about.

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Now, therefore, let's take the situation.

Your Honor has indicated that you are satisfied that the union was locked out, that is, the company pushed them out.

THE COURT: I didn't know I indicated that. I told my law clerk that, I didn't know I told it to you.

MR. AUERBACH: I think you said on the record, yes, you are satisfied this was a lock out.

THE COURT: If the issue before me was whether Mr. Clairmont, using him as the personification of management, in sending that list of work rules, thought that the next day there would be a strike, I would so find.

MR. AUERBACH: Now let's take a couple of other things.

Mr. Clairmont said, when I was asking him about the tread tuber --

THE COURT: What possible motive could he have of misleading you about the tread tuber? Because it seems to me if there is any doubt about your case, your evidence about the tread tuber has ended your case. The tread tuber, as I see it, ends your case.

Why would he not be able to--

MR. AUERBACH: Now I tell you why I think it makes my case, all right?

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THE COURT: I'll be very interested.

MR. AUERBACH: Clairmont said "We had a terrible situation. These guys, as a result of previous management, were just sitting there, old Mr. Slow Poke, going slowly about it. They had very fat, loose incentives, they had no motivations for work, they were not working hard, and we needed a whole job evaluation program in order to make this thing work."

And we say tommyrot, because (a) we showed from the minutes today, which were not before Judge Mansfield, that the company representative said "We have got no fault to find with the work. You guys are working just as hard as anybody else."

THE COURT: You think that is conclusive?

MR. AUERBACH: It is a company representative saying it. We can only go by what the company representative said. There is nothing in any of the records by Mr. Clairmont saying that the people are taking it easy, so Conway had a report and obviously Conway and the others were programmed to follow the instructions of Mr.Clairmont.

THE COURT: But when you are negotiating with people you often say things that you think they would like to hear, irrespective of whether you think it is true or not.

MR. AUERBACH: I can only go by what he says.

Let's take the twin tread tuber.

Mr. Hess testified, and Mr. Heinrich said what Charlie Hess said was right. So the defendants have endorsed, accepted his testimony.

I don't think the really important thing was whether the tread tuber could have been in before July 1 or after July 1. I think the important thing, your Honor, is that it puts the lie to where the cost reduction could come in.

Mr. Hess testified, and so did, therefore, Mr. Heinrich, that here you had this great big thing, as long as a football field, sitting in the warehouse--

THE COURT: It wasn't sitting in the warehouse.

MR. AUERBACH: All right, part of it was in the warehouse. But this had the capacity for cutting down the cost of production way down.

Now, if the twin tread tuber could knock the cost of production way down, what does it do to Mr. Clairmont's statement:

"There is no point in getting sales, Mr. Auerbach," he said to me, "because we couldn't produce economically," when at that time he knew, Mr. Heinrich knew, and what Mr. Henrich knew, Mr. Clairmont knew, this was not some little machine out in the corner, that when they put the

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tread tuber in, they could cut the guts right out of their high costs.

THE COURT: And they were proceeding to do it as fast as they could.

MR. AUERBACH: But he said yesterday-- not yesterday, Friday--

THE COURT: Who is "he"?

MR. AUERBACH: Mr. Clairmont.

THE COURT: Because there were two of them in there.

MR. AUERBACH: I understand.

Mr. Clairmont never ~~acknowledged~~ acknowledged -- see, we get at, what was the cause of the high cost of production, the high conversion cost? We said two things: Mr. Garber pointed out that when you have a reduced force you just can't. Some guy's got to be at one machine, even if only something comes once an hour. Somebody else has to be at another thing. You just don't have the efficiency you had.

And the Strong-Narovec figures basically support that.

So that was one part of it. You lay off people from 1100 down to 261. You are just not going to have a low conversion cost.

But over and above that, all the time Mr.Clairmont

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knew it wasn't the union contract. This is the charade.

THE COURT: Answer me this: If Mr. Clairmont, on July 16 or when he came in, was planning to do what you say he was planning to do, obviously this was his plan, why the devil would he authorize spending 200, how much ever -

MR. AUERBACH: There is a good reason for that.

THE COURT: What is that?

MR. AUERBACH: They wanted to sell to one of the people that they ultimately sold to, either a Goodyear or a Goodrich or somebody else, a viable plant.

You see this gets back to what the Strong-Narovec people said. They didn't have the sales. They had the work force, they had the plant, but, your Honor, what good is a plant if somebody comes to you or to me or a group that we represent and says, "We have got the most beautiful factory in the world here to make tires or to make shoes or anything else, and a high production competitive industry," if you are not in a position where you are going to be able to get the sales to put the force on, the labor force on.

You are going to lose your shirt. Sales is the core of the whole thing.

Mr. Clairmont did eventually sell this plant, your Honor. He sold two things: He sold the plant and the name

THE COURT: I don't know there is any evidence that Mr. Moss or Mr. Heinrich knew about it before Mr. Clairmont started.

I was so amazed that he knew all this and he says he checked it after he heard the testimony about it.

MR.MOSS: I never heard of the tread tuber until Mr. Auerbach asked Mr. Clairmont. As soon as he asked Mr. Clairmont, I said to Mr. Heinrich, "What in hell is a tread tuber?"

And he said, "Well, it is a big machine. Re

"And I don't remember much about it but I'll go back and check about it"and he did.

MR. AUERBACH: If we accept this, this is something that Mr. Clairmont. and we have a right to assume Mr. Clairmont knew the important production problems, the important areas for improvement of production, that he did know. If nothing else, when he authorized-- that is the exhibit that Mr. Moss put in this morning-- obviously Mr. Clairmont is not the kind that will authorize that kind of expenditure of money without having gotten a full briefing and explanation from Mr. Heinrich.

THE COURT: I can tell you if I had authorized the expenditure of $200,000 in 1963 I'd remember it but I don't think it necessarily follows that Mr. Clairmont would.

MR. AUERBACH: All right.

Now, this is the important thing, your Honor. They knew that they could do a very, very great deal in terms of cutting their cost of production way down, based on Mr. Heinrich's own admission of what Mr. Hess said was correct. All right.

Then it wasn't because of the incentives or things like that, or because there was a tough union and a weak management. But there is something else, too.

Mr. Clairmont said we couldn't do anything under the contract about job evaluation or incentives, but, again, Mr.Hess testified, and Mr. Heinrich endorsed it, that all the jobs on the tread tuber would be different.

THE COURT: So you get job evaluation on the tread tuber about like that.

MR. AUERBACH: Like that. There is nothing to discuss. The management didn't go ask the union, they just sent their guys with the stop watches around and they come out and they say we are putting these new rates and the union can either accept it or discuss it or grieve it or whatever, but they don't have to ask permission to do it in the first instance.

So we think it gives the lie, whether it is intentional deceit or saying what you would like the

situation to be.

There is no question that they could have made this an efficient plant whether the unionwent along with it or not. And there was no claim or statement that the union was going to stop them from putting in the tread tuber or anything of the sort.

Now, let's take something else that Mr. Clairmont said.

All of these things with regard to the tread tuber were certainly not before Judge Mansfield.

THE COURT: I think if they had been he would have granted a motion for summary judgment.

MR. AUERBACH: Well, the point is again I get back to, your Honor-- he has got a beautifully efficient plant. Mr. Garber said if we all agree, if the men all agree to work for nothing what would happen?

And the answer is "What are you going to do?" He didn't have sales.

Mr. Clairmont kept saying there was no point in getting sales because we would only have lost more money.

Now, he is the one who said that, your Honor. He is the one who said that knowing about the tread tuber. He is the one who said that knowing that he could do a job evaluation without the union's consent.

have shown the contrary, we have shown by minutes, by Mr. Garber's statement, Mr. Fisher's testimony, that and Mr. Vasko's testimony, that if anything, the rates, the earnings, the incentives at Conshohocken were at or below their competition, by and large below. And that it was just then a matter of two things: having the plant in operating efficiency, which Mr. Hess, Mr. Tarbutton, and their fellow employees couldn't do a thing about. It was management that could do it. It was management that put the people out mowing grass.

If an employee is told "Hess, you go take ~~tart~~ that lawn ~~law~~ mower," he's got to do it. Otherwise, he can be fired.

But don't say then that, "you are causing us to lose money."

Now, let's take the other thing. When we talk about credibility, Mr. Clairmont said, "Well, we keep the people on mowing grass and doing these other nonsense jobs, because it didn't pay for the red tape to send them out because we might get an order."

Well, what's the big deal about calling the people back?

THE COURT: What is your theory about why he kept them on?

MR. AUERBACH: I think that he wanted to raise,

as I say, raise his production, that is, his conversion costs.

THE COURT: What was the advantage to him to do that?

MR. AUERBACH: He was doing this for a short period of time. Remember, we have to start off way back at the beginning.

THE COURT: Who is he impressing by having high production costs?

MR. AUERBACH: He is hoping to impress the union and impress your Honor and whoever else would be sitting.

THE COURT: Nobody on your side thought of this theory of action until years after this and are you suggesting that he did any of it?

MR. AUERBACH: Yes.

THE COURT: He instigated a lawsuit that you didn't think of for five years, and he was preparing for it?

MR. AUERBACH: You see, here is the problem: What happens, your Honor -- and this is the thing -- we have said that this was a charade. This man planned it. In other words, he sized the situation up. He sized it up at the beginning. And he covered it up pretty well.

The fact that we weren't smart enough, or weren't

Mr. Garthwaite said, "I would rather have you than the other evil, Mr. Kahn," or whoever it was, and he encouraged him to come in.

So at least in June, Mr. Clairmont had been able to find out.

THE COURT: June of 1962?

MR. AUERBACH: Yes. In June of 1962, Mr. Clairmont had all the opportunity to find out how bad itwas.

I say if it was really as bad and as hopeless and as terrible and that the company was going to lose money, then Mr. Clairmont, like any normal person would have said to Mr. Garthwaite, "Look, I am in with what I have got in, I will be glad" --

THE COURT: Why do you limit the possibility that he thought he would win a strike. You have produced testimony that the community was in bad financial straits, that everybody was out of work.

Why do you eliminate the possibility that he thought he would win the strike?

MR. AUERBACH: He didn't try and he didn't intend to try.

THE COURT: Why do you say that?

MR. AUERBACH: I will say this, your Honor: If he really wanted to break the strike, if he wanted to get people in, there is a way of doing it, or at least a way of

attempting to do it.

You have a right, under the law, and I ask your Honor to take judicial notice of it, that's not an unfair labor practice for an employer when a union is on strike to send out letters. He has a right to communicate directly with all the employees and members of the union and say to them, state his position.

This is why we did what we did, this is the offer we make, and this is commonly done in all these strikes.

And then to say to you, "We will give you 48 hours, or 24 or 72 hours, whatever you want, to come back to work, and if you don't do so, we shall seek replacements."

Now, what happens? Then begins the attempt, if you are really trying, you can, and particularly in the kind of depressed situation that they had there, he would have won. He would have won. He would have won because what it all comes down to, these other people had to eat. They were unemployed. And as Mr. Sabor testified, one was right across the road, but certainly they were all within easy distance, he didn't need to go to the unemployment insurance. That's not where you go when you want to get people anyway.

You put an add in the local paper. What does it cost? You just send signs out. You put an add on the local radio. Not a big item, of course.

There was no showing that they made any real attempt to do this.

THE COURT: Did you ask him to do that?

MR. TAYLOR: The testimony was that in September of 1964, after the welfare agreement ended, your Honor, and in Mr. Heinrich's affidavit for a summary judgment specifically says that was ~~whether~~ when they sought strikebreakers, but they had an injunction against mass picketing in September ~~1960~~ 1963 which would specifically allow them to get people through a picket line without any force or shoving or anything else and they did nothing about it.

THE COURT: Why did they get the injunction?

MR. TAYLOR: Probably because of commotion outside the plant. The workers didn't exactly like management.

THE COURT: Why did they care.

MR. AUERBACH: They didn't exactly like Clairmont, your Honor.

THE COURT: Why did Clairmont bother to get an injunction on your theory?

MR. AUERBACH: Well, Clairmont may have gotten an injunction because he may have feared violence.

THE COURT: Why did he care? Why didn't he just go home?

MR. TAYLOR: They had executive staff, your Honor.

THE COURT: He didn't say there was no point. He just said he wasn't successful in getting them. He said he was working on them, and he got the Pep Boys or whatever they were.

MR. AUERBACH: It would have meant losing more money. I took them at a loss. If I got any others, I would have had a bigger loss. Would he have had a bigger loss if he could have operated more efficiently? Not so. There is nothing to indicate that he couldn't have operated as--

THE COURT: There is nothing to indicate that he didn't try to get as many sales as he could and his testimony that he did --

MR. AUERBACH: Okay. Let's suppose that he could not get the sales and he knew it. This is the point. Right from the beginning, when he got in, you don't start -- your Honor, you go into a highly competitive field like tire making, and I think there was evidence that it is a highly competitive field --

THE COURT: Now, I haven't met Mr. Barkett. I have seen Mr. Heinrich and Mr. Heinrich says Mr. Barkett is a man of great quality. Why did he bother to get Mr. Heinrich and Mr. Barkett if he was planning to dissolve the whole thing? I didn't ask him what he was paid but I don't think it was for nothing.

MR. AUERBACH: It didn't come to several million dollars.

THE COURT: Why did he bother? Why did he bother putting in the hot line? Why did he bother getting these people, Heinrich and Barkett?

MR. AUERBACH: They replaced other people that he had.

THE COURT: Why did he bother?

MR. AUERBACH: They were his people.

THE COURT: I understand. But if all you are going in there is to shut up a plant, why do you put in a hot line, and get Heinrich and Barkett?

MR. AUERBACH: Because you had to have that kind of people to carry on these ~~phone~~ phony negotiations.

THE COURT: Why?

MR. AUERBACH: For the same reason your Honor that they carried on all these negotiations. They wanted to make it appear that the union was putting them out of business, and that the union was being unreasonable in forcing them into a strike.

This is what they had to -- this is what they had to contend with, because they had the sub-expense, the welfare, and it came to a good deal more when you consider the unemployment insurance aspect of it. They were hoping to get out

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Honor, first of all, I had thought that it would be appro - priate to bring in some evidence as to the union's state of mind in 1963, 1964 and et cetera.

THE COURT: The union's state of mind really is not at issue.

MR. TAYLOR: The union's state of mind, your Honor, was always that there was a shutdown and a discontinuance and there was a lot of commotion about it.

The pleadings, your Honor, has got to state in any way, shape or form, anything in a contradictory or inexpert manner--

THE COURT: I told you if I had to rule on the question that was presented to the Pennsylvania Court, were presented to me, and I had to rule whether this was a shutdown, whether this was a lock-out or a strike, I would rule it was a lock-out.

MR. TAYLOR: Yes, I understand that, your Honor.

THE COURT: I don't think that gets us anywhere.

MR. TAYLOR: I understand that, but your Honor has alluded many times, in fact specifically referred many times to the changes of mind or contradictory changes of the union, and what this case was all about, when it happened, how it happened; fortunately we are in a court and we are governed by the civil rules which are very liberal in

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THE COURT: I just asked the question because I read his opinion, and I got the impression that he had before him as far as important facts are concerned, the same as I had before me.

Now, what do you think is important that was not before him.

MR. TAYLOR: Your Honor has, to some extent, ~~berate~~ berated me, or us, to some extent which I admit, for preparing the case right in the middle of the trial.

It may seem outlandish and ridiculous, and I am sure it is, but I discovered that Mr. Garber, the Friday before we produced ~~them~~ him, I specifically said so, as a matter of fact that Monday, on Sunday, before we produced ~~them~~ him on the Wednesday, I discovered him and how important a witness he was, and what he might have in the way of material, and I never even knew about it before.

THE COURT: Don't blame me for that.

MR. TAYLOR: I don't understand that. But everything that Mr. Garber came in with and testified to we had no knowledge of.

THE COURT: What was it that he said that wasn't before Judge Mansfield?

MR. TAYLOR: He gave a far more graphic demonstration by analysis, testimony, and notes of the minutes of

what was going on of what the company was proposing and what the union was offering.

THE COURT: You never heard of him before this? Well, that's beside the point. Go ahead.

MR. TAYLOR: We have never had the opportunity of having Mr. Clairmont's testimony and statements, your Honor.

THE COURT: I understand, but how do you think that helped your case?

MR. TAYLOR: Okay. Judge Mansfield says quite aside from testimony of company officials as to their intentions, there is overwhelming evidence that the company, after the strike began, and even after the welfare agreement was terminated, was struggling to resume operations.

Your Honor, that is pure unadulterated hokum.

THE COURT: That's a hell of a thing to say about a Court of Appeals judge.

MR. TAYLOR: I mean in light of whatever he had before him which I still don't agree with, but certainly in the record before you it is pure hokum, and I will go into why.

For instance, it continued after September 8, 1964 to maintain that the Conshohocken plant had a large staff of people.

Your Honor, those people have nothing to do with

THE COURT: It seems to me I have heard that.

MR. MOSS: The pretrial order says that the company claims that its records showed so and so, and Mr. Clairmont testified that there were fifty to seventy people in the plant until they made the decision to ~~strike~~ close. He didn't testify about what they did.

MR. TAYLOR: The pretrial order, you will understand, was specifically worded but we could not agree --

THE COURT: I just remembered that there was testimony to that effect.

MR. TAYLOR: On this point, there was no attempt to dispose of the plant or any of its tire-making equipment. We have direct testimony that prior to the deadline of the strike, they shipped out tires to warehouses, they shipped out raw materials to suppliers.

THE COURT: What else could they do?

MR. TAYLOR: They shipped out molds, either back to customers whose molds they were or to other places who would use the molds to produce their tires.

THE COURT: What does that signify? What else could they do? They were expecting the strike.

MR. AUERBACH: On June 7, your Honor? They had the first negotiation meeting May 29. And Mr. Hess testified that on June 7, they shipped out the molds. That's a pretty

early date to expect a strike.

THE COURT: I would think that the strike was inevitable, it was an obvious conclusion that there was going to be a strike in this situation.

Maybe I am wrong.

MR. TAYLOR: That is right. The management had decided there was going to be a strike. Mr. Clairmont thought it would do the union some good.

THE COURT: I have said that if the question were before me --

MR. TAYLOR: But it is part of the whole cloth that we are discussing.

THE COURT: I understand that. I'm just telling you that I don't think its sufficient for you to establish that they expected a strike. It seems to me --

MR. TAYLOR: Absolutely. It is only one facet. But we must cover all the facets before we prove intent, what a reasonable mind can assume from all the actions or failure to act.

Mr. Clairmont also testified that unfortunately, time being what it is, I have not been able to check, but he testified that with this business about the antitrust problem with Sieberling, which the government allowed, I guess it is Firestone to take over Sieberling, because they were the

biggest employer in the town of Barbidon, Ohio, and he went back to Goodyear.

Well, your Honor, the original lease or option to purchase Goodyear was in 1964 or 1965, and I can check the exact date, but it was signed then. If he had to go back, he had to be disucssing the sale of that plant before.

Furthermore, he did find -- he was very lucky -- he was very fortunate to find Aeroquip who took the Rubber Division off his back. He said, "We unloaded a tremendous liability with it." No doubt about it.

The funding of past service liability was killing any deal he had to sell that plant as a going operation because there was tremendous liability with it. He couldn't bring in a joint venture partner by merger and he couldn't sell out.

Certainly he tried to sell Republic and when he went through with it, I think there is no doubt in anyone's mind that he would have sold Conshohocken if he could have made a deal from it. I think we can assume that he was trying. We had no evidence before Judge Mansfield on any of this.

"On the contrary, the union's claim, furthermore, appears to us to be but a belated rationalization which is inconsistent with his own earlier position."

I must submit that, since this is both a court of equity and law, that that may be true. But I don't believe that the plaintiffs should be punished or precluded in equity, if that's what we can call it, by the inconsistent positions of their attorneys since the rules of civil procedure give us the right, your Honor, to prove what we think was the fact at this time.

THE COURT: There is no question about that. It is irrelevant though, what the facts are as to what people's reactions will be as to what's going on at the time.

MR. TAYLOR: I don't think either side knew quite what to make of that special distribution payment and how it was to be handled unless the company foreman said, "We are closing down and we owe you a certain amount of money."

And I am not an expert in labor law but the union, in order to be punctilious in all of its aspects, filed a grievance because there was a possibility that they had to file a grievance and they couldn't do that until the company made a statement that they were closing.

Mr. Hess said, "We cannot be guilty of an unfair labor charge by refusing to bargain, and we hoped to get the company open again. We want to help them sell the plant. We don't want them to go under. We are going to help you all we can. We are going to give you as much as we can. We want to keep the place open."

Certainly it is the exact ~~antethesis~~ antithesis of arbitrary and capricious union action. Or, as Mr. Clairmont said one year earlier when it was first on his mind, "Let's unload this welfare agreement by having it terminate along with the working agreement, or let's not have the welfare payments available ~~unless~~ in the event there is a strike."

And he said that he anticipated a strike but why? He, in 1962, as soon as he took over this sick company which he --

THE COURT: He said the contrary, and I didn't believe him on that issue.

MR. TAYLOR: He even said a two-month strike would be good for this union. Let them learn a lesson.

And I am going to take you through some of the documents with Mr. Clairmont's statements where he specifically says, "It is not a productivity problem. Help me do something. Strong-Narovec -- its conclusions and the meanings on the specifically say, and Mr. Clairmont specifically admitted, that it is only a problem of sales.

Now, forgive me, your Honor, I have several points that you brought up with Mr. Auerbach. On the idea of why did he bring in Barkett and ~~Drexel~~ Drexler, who I never heard of before, but I take it for granted there was such a guy, Mr. Heinrich, with all due respect, is an expert as a treasurer and with the finances of the company -- he had been with Mr.

MR. TAYLOR: The idea of Judge Mansfield saying that was a belated rationalization, that is he had the other comment, and it is pure dictum.

THE COURT: Of course it is, and it only has relevance to ~~praying~~ weighing the evidence, the fact that it was an afterthought.

MR. TAYLOR: It was a question of fact.

THE COURT: And obviously, it isn't an afterthought according to what you tell me. You had to amend the complaint to allege this.

MR. TAYLOR: But at least the record is clear before you.

THE COURT: It doesn't bind you, if Mr. Moss says if you made a complaint to the NLRB that they weren't bargaining in good faith, as to the complaint this theory would have been most valuable if this existed, and Mr. Auerbach has disposed of that argument, or at least answered it by reference to his client about the outraged lady.

I think that was a better analogy of this case in many ways.

MR. MOSS: I could interject that Mr. Hess, having read the book about Mr. Clairmont, ~~knew~~ said that he knew precisely what was happening before it even happened.

MR. TAYLOR: The record again will show you -- and

THE COURT: Assuming he had, what was his motive in doing that?

MR. TAYLOR: I think he had, and if your Honor will follow me, he was showing -- he might not have -- he might have changed.

THE COURT: My question is, why was he there at all? He does not impress me as a guy who wastes too much time.

MR. TAYLOR: Your Honor, the bulk of the meeting concerned some deal whereby they could get around the funding provisions and past service liability.

THE COURT: The question is, why was he there if he made up his mind to close the plant and to hell with the union?

MR. TAYLOR: Maybe he had finally made up his mind, okay? That is possible.

THE COURT: When do you want me to find he made up his mind?

MR. TAYLOR: Somewhere at this time he had to have made up his mind prior to the beginning of the negotiations where he came up with the arbitrary and fairly --

THE COURT: I think he was making up his mind right here and now in front of the union.

MR. TAYLOR: No, to himself.

me to find.

MR. TAYLOR: I feel, your Honor, at this point, and obviously maybe we have some interpretation because it is capable of a lot of interpretations.

THE COURT: I understand that. I am asking you what you want me to find.

MR. TAYLOR: Yes.

MR. AUERBACH: Yes, we want you to find, your Honor, plaintiffs want you to find, that he had already made up his mind.

THE COURT: Then answer this: Why was he wasting his time with all this talk if he made up his mind on that issue?

MR. AUERBACH: I think it is this, your Honor: he had not told the union that he had made up his mind.

THE COURT: I understand that. He impresses me as a man that does not go around wasting time. If he had made up his mind to close the plant, why was he at this meeting at all?

MR. AUERBACH: Because he was trying to get the union's cooperation to go along.

THE COURT: If he had made up his mind to close the plant, what the hell did he care about the union's cooperation?

MR. AUERBACH: If we go to the point, your Honor, of the charade, remember, if we go back to Judge Mansfield's decision, Judge Mansfield said the union said he forced them out; the company said that they were on strike. Judge Mansfield did not find a lockout, as your Honor --

THE COURT: I understand that.

MR.AUERBACH: No, he wasn't wasting his time in the sense --

THE COURT: It seems to me on your theory he was wasting his time. I do not see what he had to accomplish by spending his time arguing with union people, if he made up his mind to close up the plant.

MR. AUERBACH: He did not want it to appear, --

THE COURT: I know he did not want it to appear. Therefore, he sent Mr. Conway or somebody else to go and do what he was told to do. He does not have to do it himself.

MR. AUERBACH: That was a judgmental factor on his part. My point is that he may have felt that the mere fact that he was going, the mere fact that an important fellow like him does not waste his time, he may have felt that it would add to his charade.

THE COURT: All I am saying is, this seems to me improbable.

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MR. TAYLOR: Your Honor, he said the company was in an extremely strong position for cash, working capital and everything else.

THE COURT: I asked him and he said he could not. You did not put any evidence in to the contrary.

MR. TAYLOR: Your Honor, I definitely take exception to it.

THE COURT: You take exception but you did not give any evidence to the contrary.

MR. TAYLOR: The financial statements themselves show it.

THE COURT: A financial statement shows what the balance sheet shows. It does not show what you could get by liquidating.

MR. TAYLOR: If the balance sheet shows a heavy concentration in cash or cash alternatives, and not that much in the kind of inventory merchandise and everything else, that you might get ten cents on a dollar, for you have a realizable value.

THE COURT: There is not a scintilla of evidence before me that the company could be liquidated.

MR. TAYLOR: Well, your Honor, let's put it another way, then. He is an expert in manufacturing, he is an expert in finance, and he has come here with a long

reputation, well known. He would make an investment with several associates of $7 million, or how much they spent, buying up company stock and continuing to buy it up in a company which was a white elephant, and he could not move it in one way or another. He could not get his investment out?

I was about to ask you, if you want to believe it -- I am afraid I better not ask the question.

THE COURT: It does not mean he is planning to liquidate it. One of the difficulties of this case, as far as you are concerned, is this man did not look to me like a fellow who would go and buy a company for the purpose of having this kind of a fight on his hands. And according to your theory that is what he did.

MR. TAYLOR: He had a history of fights, your Honor.

THE COURT: With this kind of a fight?

MR. TAYLOR: Of all kinds, your Honor.

THE COURT: He said he never had a strike.

MR. AUERBACH: Not a strike.

MR. TAYLOR: He had plenty of commotion with the financial community in different industries with accountants and everybody else.

THE COURT: That 's what I could see him doing.

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then you are going to take a very big bath.

That is the word where liquidation is used in two different ways, and I think --

THE COURT: But there is no evidence it could be liquidated.

MR. AUERBACH: We are not saying the plant could be liquidated. I think what Mr. Clairmont was talking about, and perhaps you asked him about the liquidation, he was talking about you could not sell that plant under the hammer.

THE COURT: That is right.

MR. AUERBACH: That is true. To take the plant and sell it piece by piece, you would get auctioneer's value out of it, but we can still liquidate a company by selling a whole plant to somebody who can use it at a reasonably good price.

MR. TAYLOR: Furthermore, the depreciating value on the books, your Honor, was 2-1/2 million or thereabouts of this plant out of a net asset value of $24 million according to the financial statements in 1962 when he first bought in.

Now, there is a lot of money, a lot of things you could do with that money. If you are going to liquidate, even if it went under a hammer, something is going

He had a problem with the funding of the pension plan. That was grieving him terribly and that is what he went after first. We have already had the evidence on it and he has not denied it. He wanted co-termination as soon as he took over in 1963.

THE COURT: I understand the whole industry has it now, so --

MR. TAYLOR: Your Honor, what did the industry have then? We are talking about then.

THE COURT: I understand, but I cannot get too excited over his asking for something I know the whole industry recognizes as a proper demand.

MR. TAYLOR: Absolutely not, your Honor, except it jibes with the intention to close down in 1963 through a strike. That was the other thing he wanted through an unwarranted and unconscionable strike. No welfare benefits should be paid, no pensions, nothing. He did it on what we feel is a subterfuge.

He said this contract is not formally ratified. Even if we would agree man to man that on a jurisprudence there was a technicality that that contract had a legal opening, that he could hang his hat on, and I am sure he saw, in practice, your Honor, one year later to notify about acceptance and refusal, and you have already heard testimony

as to what labor relations and ordinary cases are, this is something else again. The union felt that he was not acting in good faith and his reputation added to it.

And when he came to ask for anything, I am sure they looked at him mighty suspiciously and gave him nothing and he finally gave in and agreed. The December 1962 amendments to the welfare agreements did nothing but clarify some language. He liked to term it, "I gave in to them," but he is the one that made the demands, your Honor, and those demands are very suspect.

He furthermore testified on the stand that he actually foresaw a strike. July 1962. He foresaw a strike in July 1963.

THE COURT: He testified to the contrary but I thought he must have foreseen the possibility of a strike.

MR. TAYLOR: Your Honor, I do not know, I have not got the record, I do not know exactly how it came up, but I do remember him saying, "And I determined that this previous management was so lax and the union had gotten away with so much they could really use the taste of a good strike. Let them go on strike for two months, it will really do them good."

When I asked about the language in the pension agreement, "Well, I couldn't foresee a strike lasting a

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company. Don't sit there with your thumb in your mouth and make artful noises. But you do it because the company's and people's investments are wrapped up in it.

Why do you continue to buy stock when your statements are that the company is in desperate shape? Read the interim financial statement when he finally comes out with it. Read the annual reports and the proxy statements when he sold the Republic Rubber Division to Aeroquip . The man said it. He put it right out there.

But he didn't say it that he was trying to secure control and determine what he would buy. He didn't also say "I am also buying the stock myself."

THE COURT: He did exactly that. He was filing statements with the SEC telling them exactly that.

MR. TAYLOR: Your Honor, in public statements to stockholders, he didn't say, "By the way, at the same time, I am filing reports with the SEC, private and confidential statements, which show that I am buying the stock."

THE COURT: Are they private and confidential?

MR. TAYLOR: How is Joe Public going to find that out? Are you going to call the SEC and say "Why did this guy buy?"

I don't know if such reports were available to the public then as, to some extent at least, they are now.

When you come to prove intent not to reopen, we had our best opportunity. We had Mr. Clairmont himself. I believe that his statements bear out plaintiff's case.

And the record will show--which I have not yet been able to review, and therefore I can't call it to your Honor's attention, but what he said in his non-stop monologue covered many of the points that I would have wanted to bring out on cross-examination anyway.

(Continued on next page.)

THE COURT: Why haven't you had an opportunity to review it? This was last week, Wednesday.

MR. TAYLOR: No, your Honor, we haven't got the record. I can only work within certain limits.

Yes, your Honor, forgive me. I almost missed that point. Now, I cannot miss that one.

Mr. Clairmont took over and Peat, Marwick & Mitchell were the auditors. Without going into the personalities, et cetera, he had a write down, the record bears it out, he had a nine-month or eleven-month profit of a couple of hundred thousand dollars that became a loss of $1-1/4 million or, after tax credits, $840,000. He wrote down and he claimed he was justified in so doing.

The fact it is very similar to previous operations tends to show the pattern. But the idea here is that he testified himself he virtually said he knew where every paper clip was and I believe he knew where every paper clip was because that is the kind of man he was.

THE COURT: I do not remember that.

MR. TAYLOR: Yes, and he is an expert in manufacturing. Your Honor, that little tread tuber machine -- I don't care what was missing, there was a big hunk of machinery -- required special contractors to hoist the thing, practically a whole warehouse by itself. Nobody even tripped

over it. Peat, Marwick & Mitchell walked by; they had shields on. They did not see it. I wonder if they wrote it down as obsolete. How come he knew the inventory and the goods that were no good, rubber that was bad, that they were knocking out --

THE COURT: What is your point?

MR. TAYLOR: That the tread tuber is of interest, your Honor, and he cannot be that surprised that Barkett tells Mr. Heinrich in February of 1963 there is such a thing sitting in the warehouse.

THE COURT: Let's see what you are trying to prove. You asked him about the thing and he said it rings a bell. I cannot remember what it is about. So now you are trying to tell me that he remembered and was lying? What are you trying totell me?

MR. TAYLOR: I submit I find it absolutely incredible that that man did not know that that machine was out there and what it was. Incredible. And he may not remember.

THE COURT: Not that he did not know back at the time it happened, but are you trying to tell me as he sat there in the witness stand he knew all about it and denied knowledge?

MR. TAYLOR: No.

THE COURT: What are you trying to say?

Nobody is blaming anybody. The previous manager may have caused that, to go from 4-ply to 2-ply, to go to radials, or I don't know what. I do not think it matters. They were not competitive and there was no rational basis or reason for anyone spending the incredible fortune that will be necessary to create a viable company here.

It would be a fool-hardy risk of a major amount of money and then no guarantee, according to his own statements, that he could do it. He said he probably could not. If we were all a bunch of Sherlock Holmeses in those days they might have listened to everything he told the stockholders. Look who he is and look what he has told us. And we would figure out what his intention must be and when he is going to do and how he is going to do. Unfortunately, human nature being what it is, men being out of jobs, you can fool some people. And very possibly they were fooled because they tried to go on and they tried to make a viable company here.

I am not even saying he did not make an effort at one point, but there did come a time when he determined that it was all over. When Mr. Hess said that he had a meeting which is unrecorded, maybe it is his mind playing tricks with him, but he had a meeting in which

he believes that he told, if not Clairmont, Conway. Someone, but look , to test him out. We will give you everything. In 1964 knowing it would not be accepted. The guy says it is too late. The ax has fallen. So it's his testimony. But the ax had fallen, your Honor. The company did not make any attempt to continue a business.

THE COURT: The reason I discount that testimony is, what seems incredible to me is, were such an offer made it would not be recorded somewhere, and it is just the kind of thing which, if I were in Mr. Hess' position, I would remember myself having said it.

MR. TAYLOR: Your Honor, it might have been a facetious statement or question on behalf of Mr. Hess and it is the kind of thing that could probably happen in the men's room.

THE COURT: He now remembers having done it seriously.

MR. TAYLOR: I am going to finish.

I am only putting the analogy on it, your Honor, that the ax, for sure, had fallen, somewhere in here it had fallen.

THE COURT: Now I make quite clear, I think when Mr. Hess was on the stand he was telling the truth as he saw it.

days a week.

THE COURT: Yes, I appreciate there is no evidence before me to support Judge Mansfield's statement that they were working on --

MR. AUERBACH: Tires.

THE COURT: -- laboratory work.

MR. AUERBACH: There is nothing. But I would ask your Honor to say, well, if you got a plant of this size with all this equipment and all that, to start with, one thing is for sure, you have to have guards.

THE COURT: You have to have maintenance.

MR. AUERBACH: You have to have maintenance and guards. When you have expensive equipment -- even aside from equipment -- you would have to have a lot of guards around the clock. Your Honor being more familiar with police work than I am, you could figure out approximately how many people you would need 24 hours a day, seven days a week just in guards; and, as your Honor knows, guards are excluded from the union by Taft-Hartley.

So these were non-union people, not supervisory, but non-union people. By law they must be non-union people. They cannot belong to our union. So, I don't know, I can't imagine that you could run seven days a week, 24 hours a day with that many and not have at least a dozen

guards.

THE COURT: No, I do not think you need to belabor that point because I recognize that there is nothing, at least unless I have overlooked something, there is nothing in the record before me to show there were employees doing anything more than maintenance, and that does not have any maintenance.

MR. AUERBACH: That was the point I wanted to make.

THE COURT: Judge Mansfield talked about laboratory work and there is no such evidence before me.

MR. AUERBACH: No. You have got a plant this size, this is what you have got to have, maintenance and guards and one or two supervisors and whatnot. This is not indicative that they were trying to keep the plant going, the business going.

THE COURT: I appreciate that.

MR. AUERBACH: I think this is very crucial, because if we look at Judge Mansfield's decision -- I am not quarreling with it because he had to go on the papers he had before him -- Judge Mansfield did not find, as you are prepared to find, that it was a lockout, and I think if Judge Mansfield had --

THE COURT: I do not think it is relevant.

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THE COURT: Well, the issue--and I am now confining myself to the second cause of action--the issue is a very narrow one: whether the management--and by "management" we might as well take it in the person of Mr. Clairmont--on or about the day the strike was called, or shortly thereafter--although nobody seems to be able to give me any date on which they want me to find this decision was made--

MR. TAYLOR: July 18th will be satisfactory.

MR. AUERBACH: July 16th is the day they promulgated it.

MR. TAYLOR: They gave them to the union on the 16th and effective the morning of the 18th.

THE COURT: At some point Mr. Clairmont came to this decision. Nobody seems to be able to tell me when they made the decision.

MR. TAYLOR: You mean the decision to close down?

THE COURT: Yes.

MR. TAYLOR: Some time prior to September 8. July 18th or at any time prior to September 8th, 1964. I wasn't there when the man made his decision.

THE COURT: Made a decision to terminate the plant permanently with a view to, in effect, defrauding the union members of their rights under the welfare agreement.

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I think all you have, or the most that can be said for the case is that you have come up with some theories as to which this might be true.

On the contrary, you have the witness Clairmont himslf who categorically testified that it was not true.

Now, I'm not treating him as a plaintiff's witness. Obviously I am not saying you called him and therefore you are stuck with his testimony. I am not treating him as a plaintiff;s witness and saying that you called him and therefore you are stuck with his testimony because you called him out of what you deemed to be necessity, as a hostile witness, and although Mr. Moss doesn't like the word "hostile," he clearly, under the way that phrase is used in examinations, was a hostile witness.

His financial motive apparently is non-existant because he has, according to his testimony, no concern with the outcome of this case.

MR. TAYLOR: Your Honor, contractual. It doesn't mean that he can't be sued for fraudulent misrepresentation, but he has no contractual responsibility to the company, perhaps. That might be true.

THE COURT: You suggest he may have--

MR. TAYLOR: He sold for a substantial amount of money, your Honor, and I assume that certain other people

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if they felt he perpetrated a fraud on them, he doesn't go away free as a bird.

THE COURT: It is immaterial that that is a possibility. But beyond that, he has, in effect, been accused of fraud in this case, and therefore he has an obvious interest in rebutting that conclusion, or that accusation.

Furthermore, I would guess it would be contrary to his penal interests to have a finding that he deliberately intended to liquidate this company in this fashion because one of the documents which was put before me was a statement or a prospectus in which he flatly denied that that was his intention.

I would assume that if it could be established that that was his intention and, as I said earlier, if Judge Duffy were here we could have more expertise on this subject, but I would assume that that could be the basis of a penal prosecution against him.

MR. TAYLOR: May I ask, your Honor, what document is your Honor referring to?

THE COURT: The prospectus.

MR. TAYLOR: You must mean the proxy statement of November, 1963.

And what statement does your Honor think he made?

THE COURT: There were rumors that he intended to liquidate, and the rumors were untrue, and therefore I find that it would be one of the things that would go against his penal interest, and therefore I approach his testimony as the testimony of a man who has every interest in defeating your case, and for that reason I let you treat him as a hostile witness and thus appraised his testimony.

But nonetheless, as I am accustomed to charge juries, just because a man has an interest doesn't mean that he is not telling the truth.

As I observed earlier, he did impress me as a basically truthful witness. I don't think he testified accurately in all respects because any witness who has an interest in how a controversy comes out tends to remember things in a way that it would have been nice if they had happened, but he does impress me as a truthful witness.

The same, and to an even greater extent, applies to Mr. Heinrich who impressed me as an extraordinary truthful witness, who, not being a personal party involved, was less under the human impulse to color his recollection. My impression of him is, even if he weren't, he would have more than normal ability to resist it.

Now, the picture that emerges, which I think may be the key to this whole controversy, although I don't

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pretend that in and of itself it is, but lots of times you see small things that illuminate. The key to the whole controversy is Mr. Heinrich's testimony about the tube-treader, when Mr. Garthwaite, Jr., and he talked about the tube treader, Mr. Garthwaite, Jr., was afraid to mention it to Mr. Clairmont because he was afraid he would get his head chopped off.

As soon as it was mentioned to Mr. Clairmont, however, he proceeded to make the investment of $95,000 plus $116,000 which seems to me highly inconsistent with a desire to liquidate the company.

Now, Mr. Auerbach speculates that the reason for that is that he wants to make the plant more saleable.

Well, that is a possibility also. However, when you are planning to trade in a car you don't normally spend a lot of money fixing it up on the theory that you are going to be able to get more for it after you have done that.

You figure you will sell it the way it is and let the purchaser fix it up the way he wants to.

It seems to me that it is unlikely that he would have spent that amount of money on the theory that it would make the plant that much more attractive.

Then the impact I got out of both his testimony and Mr. Heinrich's, again with special emphasis on Mr. Heinrich,

even though he was brief, was of a management that was trying to make something go, and the reconstruction of all that that you are referring to is plaintiff's counsel's ingenuity as being put upon. This reminds me--well, I guess I won't go into analogies. I won't go into what it reminds me of.

Just in general, Mr. Clairmont didn't impress me as a person who would go into a situation that way. If he went into it and couldn't get out, that would be another thing, but he wouldn't go into this situation for the purpose of creating an elaborate charade such as this one. I just can't conceive that he would. I don't think a man of his general character and appearance would have undertaken the time and trouble to create this kind of charade which involved involving people like Mr. Heinrich, and involving people like Mr. Barkett, and involving his own time to the extent that the record shows it was involved, which he testified about, and I think others. It is highly unusual for the chief executive officer of a company to involve himself personally to the extent that Mr. Clairmont did in union negotiations.

If all this was a charade, it just isn't carried with credence to me that he would have gone in for that amount of time and trouble to produce the result that it

produced.

Maybe I would spend that much time and trouble to get $5,000,000 but I don't think Mr. Clairmont would.

A number of things occurred to me. As I have already said, there was the bringing in of this management team, his personal involvement in the management as illustrated by the hot line, and all these things seem to me to indicate a determination to make the concern go, and I think he obviously is a man who engenders strong feelings.

He obviously had Mr. Garthwaite, Jr., scared, and he obviously had the union man concerned, and the result was what we have seen.

I appreciate the fact that this isn't a negligence action and that what we are suing for is things which, if the plaintiff's theory is correct, is what people have earned.

That doesn't seem to me to take the place of proof, and for the reasons I have indicated now as well as from things that I have indicated in the course of the discussions between us, what you have to prove is that it is more likely than not that this happened, and my reaction is that it is more unlikely than not that it happened.

The considerations which I mentioned the last time you rested, by the plaintiff, which would have then

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THE COURT: Wait a minute. On this, this cause of action has kind of been lost in the shuffle. We haven't paid much attention to it.

I will reserve decision on that and Mr. Moss will write a memorandum in support of his motion to dismiss which you will have in one week?

MR.MOSS: I will have it in a week. I will have it by Monday.

THE COURT: By Monday.

And you will answer it.

Will a week be enough for you?

MR. AUERBACH: Yes, surely, your Honor.

But I would like to, if I may, your Honor, because it is quite clear here, they mention at the same time we have assigned to them the following agreements between our company and your union, and they refer to the three ongoing agreements, the general agreement, the supplemental unemployment benefits agreement, and the employee welfare benefit program.

And then they say,"as a result of the assignments of said agreements, Aeroquip has assumed all our obligations thereunder."

MR. TAYLOR: I believe that what MR. Auerbach is getting at --

MR. AUERBACH: To understand it, if I may, your Honor, in terms of what this was about, that this was again not pure paper, the union, this was not a case of somebody buying out the old business.

THE COURT: Well, I don't think this is profitable.

After you have submitted your respective briefs, if either side thinks further oral argument will be useful, you may notify me and I will arrange to have it because the fact of the matter is that this first cause of action was really lost in the shuffle.

If anybody wants to ask a question in relation to it, I assume all the necessary evidence is in the record, but it hasn't been called to my attention in any coherent form so we will just have that scheduled for briefs and if either side wants oral argument on it I will arrange it.

MR. AUERBACH: Your Honor, you have not specifically, although you have indicated you have granted the defendant's motion with regard to the second cause of action, you have not specifically said it, and not that I am looking for you to say it, but I would just like you to--

THE COURT: I will give you an order at the end because there is no point in starting, assuming I make a

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similar decision in one, if I don't, then--

MR. AUERBACH: I am talking about the second cause of action.

THE COURT: I understand, but on the second cause of action you don't want a final order until you get a final order on the first because you don't want two sets of appeal times running.

MR.AUERBACH: I just wanted to state so the record is clear that we respectfully take an exception to your Honor's intended ruling on the case.

THE COURT: That is obvious, and the only reason that I am not making it as a ruling is that you don't want two sets of times to appeal.

MR. TAYLOR: May I request, since we are all here, your Honor made a reference to a statement in that proxy statement that Mr. Clairmont said, maybe it is immaterial with regard to your Honor's opinion but I am interested, the statement that he was not intending to liquidate.

Was that the statement,your Honor?

THE COURT: I can't find it now. I just remember reading it. He made no proxy statement in which he said -- he didn't personally state, the company said it, but it was quite clear that he has endorsed everything,

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there have been rumors that we intend to liquidate, and they are false, or something like that.

Now, this is not necessary for my opinion. If it wasn't true if I just dreamed this somewhere, that is a reason for discounting Mr. Clairmont's testimony which does not exist.

I merely cited it as a reason for accepting Mr. Clairmont's testimony with caution. I think it is there. I don't think I misheard it.

MR. TAYLOR: It is not in the proxy statement, your Honor.

(Case closed.)